

Accountable...
to stakeholders

**Ne tardez plus, agissez
dès maintenant**

Compensation...
that is fair

Transparency...
in decision making

Non-adversarial...
adjudication not litigation

Operations...
that are respectful and responsive

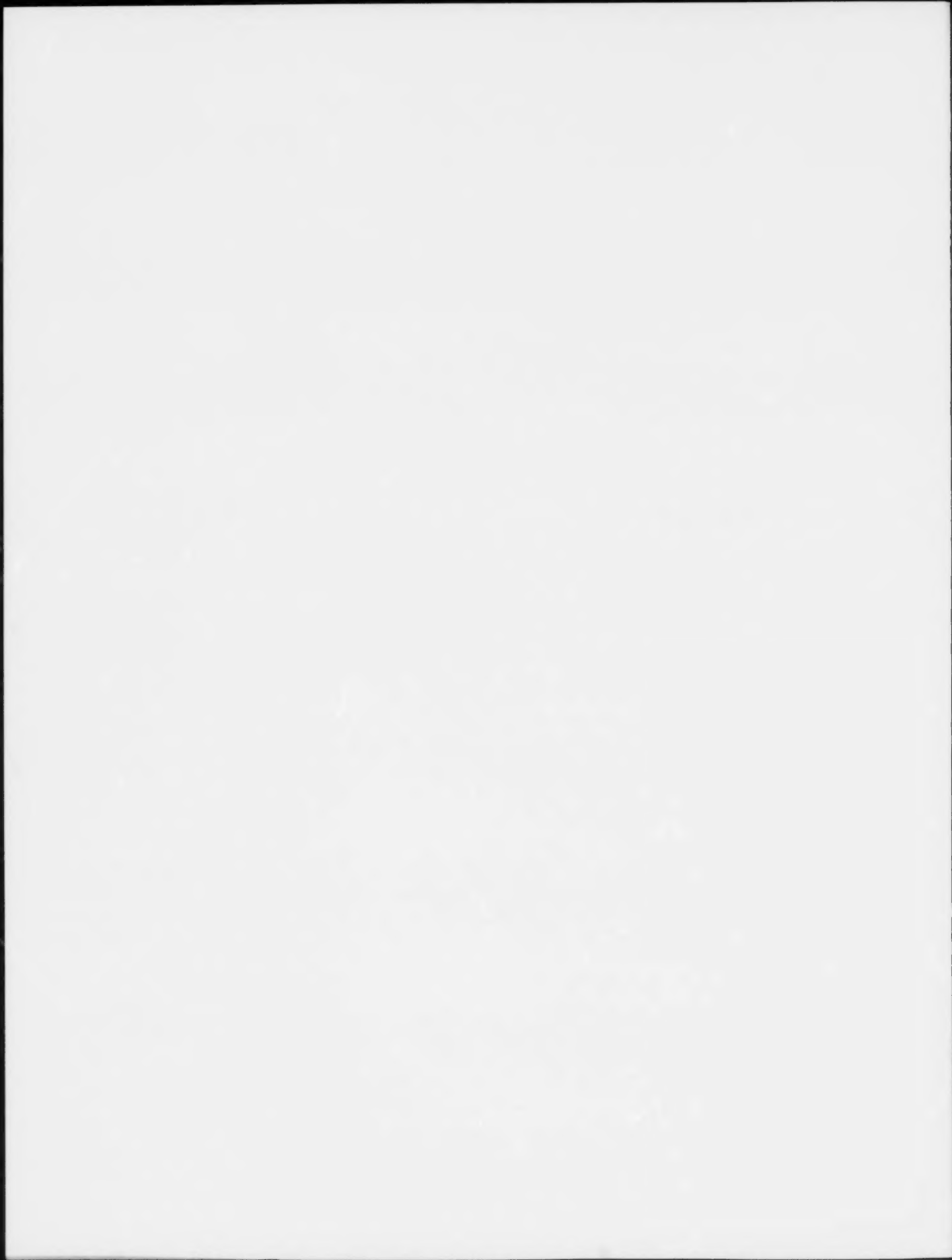
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Workplace safety...

Λϭϭϩϩϭϭϭϭϭ

to prevent work-related injuries

Report of the WCB Legislative Review Panel
To the NWT and Nunavut Ministers Responsible
For the Workers' Compensation and Safety Legislation
December, 2001



Appointed by the Ministers
Responsible for the Workers'
Compensation Board

The Honourable Joseph Handley,
Northwest Territories

And

The Honourable Kelvin Ng,
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**WORKERS' COMPENSATION
LEGISLATIVE REVIEW PANEL**

**MINISTERS RESPONSIBLE FOR THE NWT AND NUNAVUT
WORKERS' COMPENSATION BOARD**

Dear Ministers Handley and Ng,

We are pleased to provide you with the report of the WCB Legislative Review Panel - "Act Now". The development of our conclusions and recommendations was based on extensive stakeholder and public consultation. We also had the benefit of reviewing the practices in other jurisdictions and the reports of recent reviews of workers' compensation legislation.

We want to express our sincere appreciation to the many stakeholders who took the time to attend our public hearings, respond to the Stakeholder Questionnaire or write to us with their views. Their comments were of great assistance to us and are summarized within the Report.

We also want to express our thanks to those within the Legislative Review Directorate of the NWT and Nunavut Workers' Compensation Board, Margaret Halifax, M.J. Patterson and Jennifer Simpson. Their help with administrative support was much appreciated.

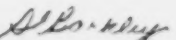
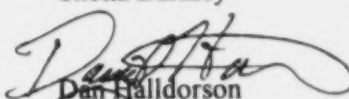
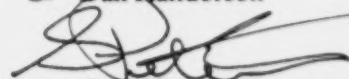
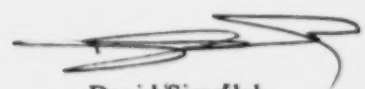
The views expressed and recommendations made in this report are our own. Our report covers a wide range of issues related to workers' compensation and safety legislation. We have also reported on our concern about trends in the administration of this legislation.

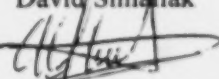
We would be pleased to provide you and the WCB Board of Directors further assistance in the consideration and implementation of our suggestions and recommendations.

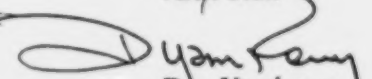
Yours truly,



Louise Vertes


Shona Barkley
Dan Halldorson
Steve Petersen

David Simailak

Alex Stuit


Don Yamkowy

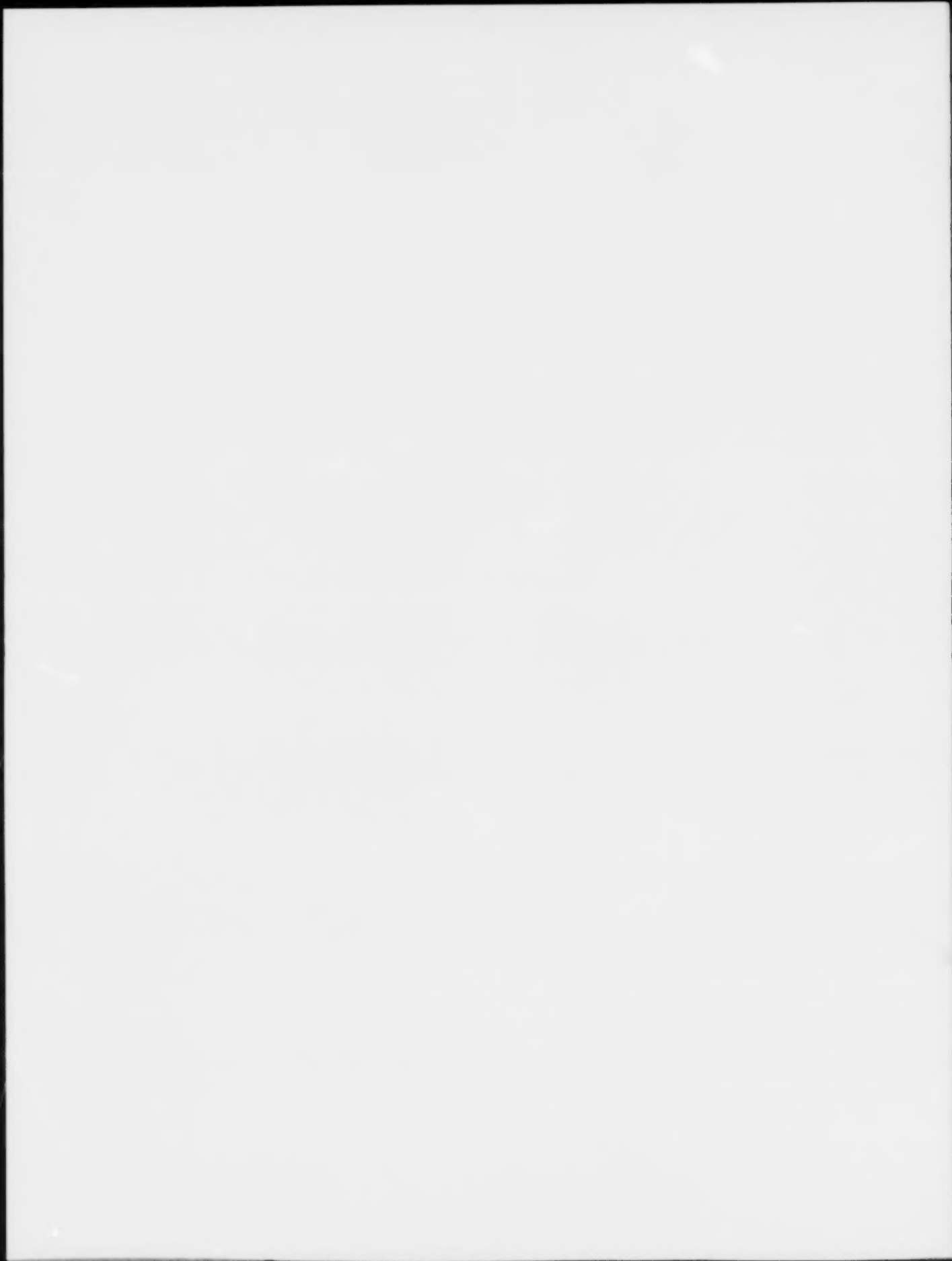


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1.0 Introduction

This section of the report describes the make-up of the WCB Legislative Review Panel (the Panel), the Panel's terms of reference, the Panel's approach to fulfilling its terms of reference, and the structure of this report.

1.1 Terms of Reference

The Ministers Responsible for the Workers' Compensation Board of the Northwest Territories and Nunavut (the Ministers) appointed the Panel in early 2001 to review the *Workers' Compensation Acts and Safety Acts* and the General Safety Regulations of the Northwest Territories and Nunavut.

The Panel consists of:

- A Chairperson representing the public interest; and
- Six members with an equal number representing the interests of workers and employers and the NWT and Nunavut

The Ministers charged the Panel with:

- Hearing oral presentations and reviewing written submissions from stakeholder groups in the Northwest Territories (NWT) and Nunavut;
- Reporting on the results of the consultation process;
- Expressing its views on the issues presented by the stakeholder groups; and
- Making recommendations to the Ministers for changes to the Acts.

The Terms of Reference for the Panel are found in Appendix B. The Terms of Reference state that the Panel will not review the operations, internal organization, or services levels of the Workers' Compensation Board (WCB).

The Legislative Review Directorate of the WCB provided research and other support services to the Panel. Contractors were engaged when the Panel required independent assistance.

1.2 Approach

The Panel began its work in February 2001. The Panel was briefed by the WCB administration about the legislation governing workers' compensation and safety in the NWT and Nunavut. The Panel also received information from the WCB Board of Directors about legislative issues. The Panel reviewed outstanding legislative issues from previous reviews of the WCB and workers' compensation legislation conducted in 1989, 1992 and 1993.

The Panel initially wrote to approximately 650 stakeholders to advise them about the work of the Panel, to invite them to public hearings, and to solicit their input. These letters were supplemented with public advertisements in newspapers and on radio and television. The Panel held public hearings in the regional centres and capitals of the NWT and Nunavut between March and May 2001. In July 2001 the Panel issued a questionnaire to approximately 700 stakeholders to obtain their views about issues that had been raised during the public hearings or from other stakeholder sources. One hundred and seven (107) questionnaires, or 15%, were returned by the deadline of August 24, 2001. In August the Panel concluded its public consultation phase with public hearings in Iqaluit and Yellowknife.

A summary of the results of public hearings and a listing of written submissions received by the Panel are found in Appendix D and Appendix E, respectively. The Stakeholder Questionnaire and Summary of Responses is found in Appendix C.

The Panel had the benefit of research comparing practices in other jurisdictions, recent reviews of workers' compensation and safety legislation completed in other jurisdictions, and additional research commissioned by the Panel. The Panel met four times to discuss its conclusions and develop its recommendations.

The Panel's discussions were always constructive. There was a thorough airing of different points of view. The vast majority of decisions about suggestions or recommendations were made by consensus. The report describes the different approaches, or points of view, considered by the Panel in coming to a decision.

The Panel heard from hundreds of stakeholders served by the NWT and Nunavut WCB. Many were complimentary about how the WCB is administering the current legislation; however, there were more who were critical. In some cases, the problem was with the legislation itself. In other cases, the criticism was about operational or administrative practices of the WCB.

The Panel has grave concerns about what we heard in relation to administration of the Acts, or what might be called operational issues. The Panel's review is limited to legislative matters by our terms of reference. However, the Panel has also been charged with reporting on the results of consultations and expressing our views on the issues presented by stakeholder groups.

In the Panel's view, legislation is simply a means to an end. It sets the framework for delivery of a program or for regulation of a practice. Legislation must be clear about what is to be provided or prohibited. It must also be clear to stakeholders and to those administering it.

1.3 Structure of the Report

The report is divided into sections as follows:

1.0 Introduction	This section describes the Terms of Reference for the legislative review, the Panel's approach to fulfilling its terms of reference, and the structure of the report.
2.0 General Themes	This section describes the general themes arising from the Panel's analysis that have been used in the development of suggestions and recommendations.

3.0 Workers' Compensation Acts	
3.1 The Fundamentals	This section describes issues the Panel considers fundamental to legislative change.
3.2 WCB Authority and Accountability	This section describes issues related to the authority and accountability of the Workers' Compensation Board of Directors and the corporate WCB.
3.3 WCB Board of Directors	This section describes issues related to the structure of the board of directors.
3.4 Stakeholder Advisors	This section describes issues related to advisors for stakeholders (i.e., workers and employers).
3.5 Review and Appeals Process	This section describes issues related to the process to review or appeal a decision by the WCB.
3.6 Compensation	This section describes issues related to financial, medical, and vocational rehabilitation compensation for injured workers and their dependants.
3.7 Assessments	This section describes issues related to the assessment of employers.
3.8 Industrial Classifications	This section describes issues related to the industrial classification of employers.
3.9 Accident Fund	This section describes issues related to the Accident Fund that is funded by employer assessments and used to pay for the workers' compensation system.
3.10 Access to Information	This section describes issues related to access to information by and about stakeholders.
3.11 Financial Penalties	This section describes issues related to the authority to set financial penalties, the amount of penalties, and the application of fines.
3.12 Employer Responsibilities	This section describes issues related to the responsibilities of employers.

3.13 Environmental Change	This section describes issues related to changes in the workers' compensation environment.
3.14 Framework for Administration	This section describes issues related to direction, guidance, or authority in the administration of the <i>Acts</i> .
4.0 Safety Acts	
4.1 WCB Authority and Accountability	This section describes issues related to the WCB's authority and accountability under the <i>Safety Acts</i> and General Regulations.
4.2 Safe Workplaces	This section describes issues related to safe workplaces.
4.3 Advice from Stakeholders	This section describes issues related to advice from stakeholder advisors to the Minister.
4.4 Employer Responsibilities	This section describes employers' responsibilities under the <i>Safety Acts</i> and General Regulations.
4.5 Financial Penalties	This section describes issues related to the authority to set financial penalties, the amount of penalties, and application of fines.
4.6 Framework for Administration	This section describes issues related to the legislative framework for administering the <i>Acts</i> .
5.0 A Final Word	This section contains the Panel's concluding remarks.
6.0 Executive Summary and Summary of Recommendations	This section contains an executive summary of sections 1, 2, and 5, and the suggestions and recommendations made in the report.
Appendices	Appendix A: Glossary and Definitions Appendix B: WCB Legislative Review Panel Terms of Reference Appendix C: Stakeholder Questionnaire and Summary of Responses Appendix D: Summary of Issues from Public Hearings Appendix E: Summary of Formal Presentations and Written Submissions

2.0 General Themes

During the course of the Panel's public consultation phase, we heard a number of themes repeated over and over. We have titled our report "**ACT NOW**" and incorporated many of the recurring comments we heard from stakeholders into the title:

- Accountability to stakeholders,
- Compensation that is fair,
- Transparency in decision-making,

- Non-adversarial adjudication, not litigation,
- Operations that are respectful and responsive, and
- Workplace safety to prevent work-related injuries.

The Panel has highlighted 5 general themes in this report. The Panel's specific conclusions and recommendations are influenced by these general themes.

2.1 The "Meredith Principles"

Stakeholders told us of the continued importance of the "Meredith Principles," which are the foundation of workers' compensation systems in Canada. The principles are incorporated in a report about workers' compensation legislation written by Sir William Meredith and presented to the Lieutenant Governor of Ontario in 1913. These principles are also described as part of the historic trade-off between workers and employers and are summarized in the Panel's terms of reference:

- Workers relinquish their right to sue employers, at common law, in return for a no fault system of compensation, medical treatment, and rehabilitation.
- Employers accept collective liability and totally fund the compensation system in return for protection from legal action.
- Workers' compensation boards must be independent of the executive branch of government and must be perceived as adjudicating on an independent basis.

- Accountability is a fundamental prerequisite for preventing misuse of delegated power.

The Ministers have directed that the Panel must use this general policy base provided by the Meredith Principles in our assessment of public input and the development of our recommendations.

2.2 Transparency

Stakeholders told the Panel that the administration of the workers' compensation and safety systems must be transparent. They want to know why and how those with authority under the *Acts* make decisions, administer or interpret the legislation, and apply these interpretations in day-to-day operations.

Stakeholders also told us that knowing how legislation is administered is not enough. They want to ensure that all those involved in the systems are held accountable. This extends from financial penalties for unsafe workplaces to stewardship of the Accident Fund.

The Panel believes that transparency and accountability should be part of the workers' compensation and safety systems. We believe this starts with legislation that is clear about intent, authorities, entitlements, responsibilities, and obligations.

Legislation must contain the means to hold the decision-makers, administrators, and stakeholders within the systems accountable for their actions.

2.3 Enabling Versus Prescriptive Legislation

Some stakeholders told the Panel that workers' compensation legislation should be amended to spell out as much detail as possible about entitlements, authorities and other elements of the system. With this approach, there would be no question about interpretation or administrative discretion. Others told the Panel that legislation should

provide a framework for the workers' compensation system, with the Minister and Board of Directors filling in the details through regulation and policy.

The Panel has generally adopted the latter position. The Panel feels that legislation should not be written for the exceptions or to provide job descriptions for administration. Legislation should be clear about its intent and provide a framework to govern administration. However, part of that framework must include the standards and means for holding governors and administrators accountable for their actions.

2.4 Adjudication Versus Litigation

Workers' compensation systems are "no fault" - that is, a system based on results rather than laying blame. Injured workers are entitled to compensation. Under the provisions of the legislation, administrators of workers' compensation systems adjudicate an individual injured worker's entitlement. Employers are classified on the basis of the risk their industry poses. If there is a mistake by administrators, an appeals process is available. This is not an adversarial system to prove one right and one wrong. This is a system to fulfill a social contract between workers and employers. There should not be any reason to litigate.

Stakeholders told the Panel in many different ways that they perceive the system in the NWT and Nunavut as an adversarial one. A number of stakeholders described it as "a them against us" situation, with the WCB against the injured worker or employer. To correct their perception of the situation, stakeholders variously proposed more legal assistance for stakeholders in dealings with the WCB, or during the appeals process, dispute resolution, medical resolutions committees, and opening up the exclusive jurisdiction of the WCB over administration of the *Acts*.

The Panel does not accept that making the workers' compensation system more adversarial and litigious is an acceptable solution to addressing the very real problems raised by stakeholders.

2.5 Operational Versus Legislative Issues

Throughout the course of our public consultation phase, the Panel heard from stakeholders about many administrative or operational problems. Our terms of reference make it clear that the Panel will not review the operations, internal organization, or service levels of the WCB. The Panel has not conducted any such review.

Our terms of reference do charge the Panel with reporting on the results of our consultation process and expressing our views on the issues presented by stakeholders. Throughout this report, the Panel will report on issues that can be described as operational. We have also offered suggestions about how our recommendations related to legislative change might be implemented.

The Panel was struck by the numerous presentations or submissions about advisors for workers, employers, or both. There were strong feelings expressed about the need for advisors to help stakeholders, particularly injured workers. We were told stakeholders needed help in dealing with the WCB – help that ranged from gaining access to the workers' compensation system, to dealing with appeals of decisions of the WCB administration. Most submissions or presentations asked the Panel to recommend legislating a role for stakeholder advisors and broadening the role and responsibilities of the Workers' Advisor Office (WAO).

The Panel sees the interest in stakeholder advisors as a symptom of a larger problem. We were told time and again that WCB administration was not treating injured workers with respect or dignity. We were told that WCB administration was not providing stakeholders with the information they needed to understand the compensation system and to access the benefits to which they are entitled. We were told that the hopes of recovering workers were raised with prospects of new career paths only to have those hopes dashed when retraining was not available under policy. We were told of injured workers having to prove the competence of their doctors to express an opinion about the status of their recovery.

The Panel did receive positive comments from stakeholders about their dealings with the WCB. This was encouraging. But, in the Panel's view, it should be the norm. What the Panel heard tells us that the workers' compensation system has become an adversarial one between stakeholders and the WCB.

The Panel does not believe that legislative change alone will address the many operational issues raised by stakeholders. As stated earlier, the Panel views legislation as a means to an end. It simply sets the framework for program entitlement or prohibited actions. A change to legislation cannot ensure a change in operational attitude.

The Panel believes that a constructive review of WCB operations is required. This review should examine the WCB in light of the many stakeholder concerns, and also stakeholder compliments, with a view to recommending system-wide change in structure, processes, and attitudes. The Panel believes such an operational review is of utmost importance and should be conducted immediately, prior to the enactment of any legislative changes arising from this report.

Recommendation: 2.5 Operational Versus Legislative Issues

1. It is suggested that an independent review of WCB operations be conducted immediately.

3.0 Workers' Compensation Acts

This section of the report describes the issues related to the *Workers' Compensation Acts*. Both the NWT and Nunavut Legislative Assemblies have enacted a *Workers' Compensation Act*. These *Acts* mirror each other with only a few minor differences that do not affect the type of workers' compensation system in the 2 territories. To keep it simple, all references to sections or subsections in the *Acts* are to the *Workers' Compensation Act* of the Northwest Territories.

For each issue, there is a description of the issue followed by the Panel's findings and any recommendations.

3.1 The Fundamentals

This section addresses those issues that the Panel feels are fundamental to our review and subsequent recommendations for legislative change.

3.1.1 The Purpose of the Acts

Many stakeholders suggested to us during our public hearings that the purpose of the *Acts* needs to be spelled out in legislation. The majority of respondents to the Stakeholder Questionnaire agreed.

The 2 major reasons given for including the purpose of the *Acts* as a preamble to the body of the legislation were:

- It provides a clear message about what the *Acts* are intended to do and why.
- It provides direction to those making decisions and administering the *Acts*.

The Panel accepts the advice of stakeholders. The question we then had to answer was, "What is the purpose of the *Acts*?" The Panel examined the Meredith Principles in light of changes in the general workers' compensation environment. The Panel identified the increased importance and emphasis on safe workplaces and work practices. The Panel was also struck by the presentations of many injured workers who told us that what they

wanted was to return to work and stressed the importance of vocational rehabilitation in helping them to do so.

The Panel noted that compensation has changed over time. Initially, compensation was seen as financial payments and medical treatment. Over time, vocational rehabilitation has become an equally important element of compensation.

Injured workers described workers' compensation as something to which they are entitled. This entitlement stems from workers' relinquishing their right to sue employers. The Panel accepts that description.

Subsection 7(5) describes the "standard of proof", or basis for making decisions, to be used by the WCB when administering the *Acts*. A key portion of that clause states that the WCB "shall from the circumstances of the case, the evidence adduced and medical opinions draw all reasonable inferences and presumptions in favour of the worker." Injured workers repeatedly stated they felt that they had to prove or actively pursue their entitlement to compensation under the *Acts* with the WCB administration and Appeals Tribunal.

Workers' comments are directed to operational matters outside the Panel's purview. However, the "presumption in favour of the worker", or simply put, giving the benefit of doubt to the worker, is legislative direction about how decisions will be made in the administration of the *Acts*. In the Panel's opinion, this direction to administrators is important enough that it should be highlighted in a statement of purpose.

Recommendations: 3.1.1 The Purpose of the *Acts*

1. The legislation should be amended to include a statement of purpose that describes the intent of the legislation and provides direction on its administration.
2. The statement of purpose should include the following elements:

- a) The ultimate public policy objective is safe workplaces and safe work practices as governed by the *Safety Acts* and *Mine Health and Safety Acts*.
- b) Even with the best of intentions, work-related accidents happen, or workers acquire industrial diseases.
- c) To address the impact on injured workers and their dependants, there exists a no fault system of compensating injured workers and the dependants of deceased workers.
- d) Compensation is available to:
 - (i) get an injured worker back to work that they are able and capable of performing;
 - (ii) mitigate the effects of a work-related injury or disease on the worker's quality of life through compensation; and
 - (iii) provide for the dependants of deceased workers.
- e) Compensation includes financial, medical, and vocational rehabilitation compensation.
- f) The legislation shall be administered with a presumption in favour of the injured worker and by applying the principles of natural justice.
- g) The Accident Fund, which provides for the compensation system, must be sustained in a manner that recognizes risk and safe work practices.

3.1.2 Definition of Worker

There is a definition of a worker in the *Acts* that is similar to that found in other jurisdictions. One cannot rely solely on the definition to determine who is a worker for the purposes of the *Acts*. For example, Subsection 11(2)(b) excludes a worker who is a family member of an employer and living with that employer.

The Panel considered a number of issues related to the definition of a worker:

1. Should the definition be changed to confirm that an employment relationship must exist for someone to be considered a worker?

2. Are there workers in specific industries that should be included or excluded as in other jurisdictions?
3. Are there specific types of work or occupations that should be included or excluded, as in other jurisdictions?
4. Should a worker's relationship to an employer affect their designation as a worker?
5. Should independent operators or sole proprietors have the choice of designating themselves as workers?
6. Should executive officers of an employer be considered workers?
7. Should volunteers be considered workers eligible for compensation in certain circumstances?

When considering the first 4 questions, the Panel concluded that a worker is a worker. In other words, anyone receiving a paycheque from an employer is a worker. In the Panel's opinion, this includes "learners" or apprentices who are learning on the job. If there are reasons of precedent to specifically mention learners, then the existing reference in the *Acts* should remain. It made sense to the Panel to reinforce the employment relationship in a manner similar to the Ontario definition.

The Panel received a number of submissions concerning the eligibility of independent operators (currently defined as a person...who does not employ any worker...). The term sole proprietor is also used in other jurisdictions. The Panel had no opinion about which term is more appropriate. We are concerned that there be consistent usage of one term.

Independent operators are not considered workers for the purpose of receiving compensation under the *Acts* (in Subsection 9(1)(c)) unless an application under Section 9(2) is made and accepted by the WCB.

Stakeholders told the Panel that employers who have contracted with independent operators who have not applied for coverage under the *Acts* are being assessed as if these independent operators were their workers. This makes no sense. These independent

operators have chosen not to apply for coverage (for their own reasons) and are no risk to the Accident Fund. Their customers should not be burdened with paying assessments for something the independent operator does not want.

Stakeholders told us that if independent operators choose to give themselves a regular paycheck, there should not be any discretion in accepting an application for workers' compensation coverage from them. The Panel agrees with stakeholders.

Currently, Subsection 9(1)(a), which excludes executive officers from being considered workers, and Subsection 66(2), which includes executive officers, contradict each other. The Panel believes that executive officers receiving a paycheck from an employer should also be considered workers. As stated above, where an employment relationship exists and a person receives a regular paycheck, that person should be considered a worker for the purposes of the *Acts*.

Volunteers make a significant contribution to life in the NWT and Nunavut. The *Acts* now deem certain classes of volunteers, such as mine rescuers and firefighters, as workers under the *Acts*. The Panel does not see a difference between volunteers who are called upon to fight fires and volunteers who are called upon to assist in declared civil or community emergencies. No assessments are collected for volunteers in this category.

We found the Ontario legislation helpful in this regard. This legislation specifically mentions volunteer firefighters and ambulance brigade members but includes 2 more general clauses related to volunteers assisting the police and those who assist when an emergency is declared by an authorized official (i.e., the Premier or head of a municipal corporation).

Volunteers in general are addressed in Subsections 8(3) and (4) of the *Acts*. The *Acts* provide that an employer (i.e., the organization for which the volunteer "works") may apply for coverage of their volunteers. It is up to the WCB to approve an application or not. Assessments are collected for any approved coverage. This is an area where the

Panel feels legislation should be prescriptive rather than permissive. The Panel does not presume to dictate whether or not volunteer organizations wish to cover their volunteers. However, the Panel does believe that once a decision to apply for coverage is made, the WCB must accept the application. In this case, assessments for coverage would be levied by the WCB and paid for by the volunteer organization as the "employer".

Recommendations: 3.1.2 Definition of Worker

1. The legislation should be amended to include reference to an employment relationship. Ontario's legislation should be considered in this regard.
2. The legislation should be amended to consolidate the definition of a worker so that all inclusions and exclusions are found in the same section.
3. The legislation should be amended to simplify the definition of a worker and include all persons receiving a regular paycheck from an employer, and if necessary for greater certainty, should specifically include learners.
4. The legislation should continue to provide independent operators with the option of applying for coverage under the Acts. The legislation should be amended to require the WCB to accept an application for coverage from an independent operator.
5. The legislation should be amended as required to ensure that employers are not assessed for independent contractors who choose not to apply for coverage under the Acts.
6. The legislation should be amended such that all volunteers that are called upon in emergencies (e.g., firefighters, ambulance drivers, mine rescue workers, those providing assistance to civil or police authorities in a declared emergency) are covered under the Acts. The legislation should be further amended to confirm that coverage begins when these volunteers leave their home on their way to the emergency. There should not be a change to legislation to levy assessments for this category of volunteers.
7. The legislation should be amended to require the WCB to approve applications from organizations wishing to pay assessments for coverage of their volunteers.

3.1.3 Definition of Employer

The Panel was asked to consider recommending revision to the definition of employer in the *Workers' Compensation Acts* and the *Safety Acts*. It was suggested that having different definitions created confusion for the public.

The Panel examined the respective definitions against how the terms were used in the legislation. The Panel does not accept the suggestion that a consistent definition is necessary and believes that in some cases a consistent definition would actually add to the confusion.

The Panel reviewed the definition of employer for currency with changing workers' compensation environments. The Panel noted that the term "independent operator" has been replaced in the legislation of other jurisdictions with the term "sole proprietor." The Panel observes that "sole proprietor" is more commonly used.

The Panel concluded that the current definition of employer boils down to an entity that pays workers in their employ, including themselves if they are an independent operator. As with the current definition of worker, there is no reference to an employment relationship. This seems unusual.

Recommendations: 3.1.3 Definition of Employer

1. Consideration should be given to using the term "sole proprietor" in place of "independent operator" in the *Acts*.
2. The legislation should be amended to include reference to an employment relationship with workers in the definition of employer.
3. Consideration should be given to reducing the list of entities (e.g., firm, association, body) that could be employers in the definition of employer.

3.2 WCB Authority and Accountability

3.2.1 Exclusive Jurisdiction of the Workers' Compensation Board

One of the principles arising from Meredith's Report is the exclusive jurisdiction of workers' compensation boards. Subsections 7(1), (2), and (3) of the *Acts* describe the exclusive jurisdiction of the NWT and Nunavut WCB. A court may review a decision of the WCB where there has been a denial of natural justice or the WCB has exceeded its jurisdiction.

Decisions of internal WCB review committees are subject to review by the Appeals Tribunal. The Appeals Tribunal has exclusive jurisdiction over appeals (Subsection 7.3) but must apply the policy of the Board of Directors (Subsection 7.7(1)). This is discussed below in Section 3.5.6, Exclusive Jurisdiction of the Appeals Tribunal.

The Panel heard stakeholder submissions questioning the exclusive jurisdiction of the WCB. Stakeholders felt that if the WCB was not acting fairly or in accordance with the legislation, there should be recourse to the courts.

The Panel balanced this view against not only this aspect of the historic trade-off but also our view that workers' compensation is a system for adjudication, not litigation. The Panel does feel that the exclusive jurisdiction of the WCB places a greater onus on the WCB to adjudicate cases fairly within the parameters of presumption in favour of the worker and natural justice. The WCB should be held accountable in the court of public opinion for its actions.

3.2.2 Independence Issues

Part of the historic-trade off that established workers' compensation systems is independent administration of the legislation. Employers contribute to the Accident Fund for the express purpose of financing the workers' compensation system. The WCB administers the legislation in accordance with the special provisions, such as presumption

in favour of a worker, contained in the *Acts*. Such special provisions do not always apply in the administration of government programs.

The Panel heard from a number of stakeholders about the importance they place on WCB independence from the executive branch of government. The Panel agrees with stakeholders. The Panel also feels that with independence, as with exclusive jurisdiction, comes increased responsibilities for the WCB. These responsibilities include the need for transparency and accountability in administration of the *Acts*.

3.2.3 Distinction Between the WCB Board of Directors and the Corporate WCB

The *Acts* commonly refer to the "Board," which is defined as the Workers' Compensation Board, when assigning responsibility for action or authority for decision-making. It is not always clear whether the references are to the WCB Board of Directors or the corporate WCB. The name "Workers' Compensation Board" does not help sort out this confusion.

Other jurisdictions have changed the names of their WCBs over time, especially when responsibility for workplace safety has been assigned. The term "commission" has been introduced to replace "board" in others.

The Association of Workers' Compensation Boards of Canada defines "board" or "WCB" as the corporate WCB and "Board" as the governing body of the WCB, also referred to as the Board of Directors. While these definitions are helpful, they do reflect the usage of the terms in the *Acts*.

The Panel places significant importance on accountability by the WCB and feels that accountability starts with the WCB Board of Directors. The WCB Board of Directors governs the administration of the *Acts* and is responsible for leading the corporate WCB. In order to be held accountable, there must be a clear assignment of authority. The Panel feels that generally the *Acts* should assign authority to the WCB Board of Directors. The

WCB Board of Directors may chose to delegate this authority to the corporate WCB. Taking this approach ensures reinforcement of the ultimate accountability of the WCB Board of Directors and a deliberate chain of delegation to the corporate WCB.

Recommendations: 3.2.3 Distinction Between the WCB Board of Directors and Corporate WCB

1. The legislation should be changed to rename the Workers' Compensation Board to reflect responsibilities for workers' compensation and safety. It is suggested that the "Workers' Compensation and Safety Commission" be considered.
2. The legislation should be changed to define the WCB Board of Directors and the corporate entity.
3. The legislation should be changed to generally assign authority to the WCB Board of Directors and to enable the WCB Board of Directors to delegate authority to the corporate entity.

3.2.4 Annual Reporting

Subsections 61(1), (2) and (3) describe annual reporting requirements for the WCB. A report on the WCB's administration of the *Acts* and an audit of the accounts of the WCB are required. These annual reports are made to the Minister, who is obliged to make them public by tabling them in the Legislative Assembly. As a territorial corporation, the WCB is also required to submit a corporate plan to the Minister. This corporate plan includes the objectives, strategies to achieve the objectives, a report of the achievement of previous objectives, and an evaluation of efficiency, economy, and effectiveness.

Annual reporting is one important way of holding the WCB Board of Directors and WCB accountable for their actions in administering the *Acts* and in stewardship of the Accident Fund. The Panel is satisfied that annual reporting is sufficient.

The legislation does not specify what must be contained in the annual report on administration. Stakeholders have not raised this as an issue. However, the Panel is

concerned that the report be in sufficient detail and cover important areas of administration such as changes in policy or shifts in statistics. The Panel feels that if the Minister ever becomes concerned about disclosure, the Minister should be enabled to prescribe the contents of the annual report on administration.

Recommendation: 3.2.4 Annual Reporting

1. The legislation should be changed to enable the Minister to prescribe regulations about the content of annual reports.

3.2.5 Actuarial Reporting

Subsection 61(4) describes the requirement for the WCB to have an actuarial evaluation of the WCB liabilities and assessment rates every 3 years, or when the Ministers so direct. These actuarial evaluations are given to the Minister, who is obliged to make them public by tabling them in the Legislative Assembly.

The Panel was concerned about the unanticipated nature of events that could affect the WCB liabilities and assessment rates; for example, a catastrophic work-related accident or changes in the investment market. The Panel does not feel comfortable making recommendations for change in the highly specialized field of actuarial evaluations.

Recommendation: 3.2.5 Actuarial Reporting

1. During the next review of the *Acts*, the Review Panel should be charged with reviewing the adequacy of the time frames in Section 61(4) and provided with the specialized resources required to develop recommendations.

3.2.6 Regular Reviews of the Workers' Compensation Acts

Many stakeholders told the Panel that regular reviews of the *Acts* are important. They also told us that the reviews should examine the Board of Directors' policy and WCB administration of the *Acts*. The vast majority of respondents to the Stakeholder Questionnaire thought legislative, policy, and administrative reviews should be required under legislation. Respondents were not in agreement about how frequently these reviews should take place.

Other jurisdictions have mandated regular reviews (whether legislative or otherwise) in their legislation. All describe the minimum frequency of the reviews, and some describe the make-up of the review panel or committee.

The Panel appreciates that reviews can be time-consuming and expensive. With this in mind, the Panel feels that some discretion should be available to the Minister in directing a review. The Panel does feel that reviews should take place at least every 5 years.

The Panel does not see the need to describe the composition of review panels (e.g., the number of members, method of appointment). The Panel feels that the Ministers of the day should make that decision. The Panel does feel strongly that review panels should be independent of the WCB and government.

Recommendations: 3.2.6 Regular Reviews of the Workers' Compensation Acts

1. The legislation should be changed to require the Ministers to direct an independent review of workers' compensation legislation, WCB Board of Directors' policy governing workers' compensation, and WCB administration of the *Acts*.
2. The legislation should be changed to require that independent reviews take place at least once every 5 years. This requirement should not limit the Ministers' ability to direct a review more often than every 5 years.

3. It is suggested that the first review should take place 1 year after legislative changes arising from this report are enacted.

3.2.7 Fiduciary Responsibility of the WCB Board of Directors

Section 90 of the *Financial Administration Act* (FAA) describes the fiduciary responsibility for members of a governing board of directors of a public agency. This section of the FAA applies to the WCB Board of Directors.

The Panel was asked to consider whether or not the fiduciary responsibility of the WCB Board of Directors should be repeated in the *Acts*. In keeping with the Panel's concern about transparency and accountability, the Panel feels that the addition of a clause similar to that now in the FAA would provide greater clarity.

Recommendation: 3.2.7 Fiduciary Responsibility of the WCB Board of Directors

1. The legislation should be changed to add a fiduciary responsibility clause in the *Acts* similar to that now in the *Financial Administration Acts*.

3.2.8 Liability Protection for the WCB Board of Directors

Subsection 90(3) of the FAA indemnifies members of boards of directors from liability if the members act honestly and in good faith or rely in good faith on professional advice (e.g., advice from an auditor or lawyer). This protection from liability extends to the members of the WCB Board of Directors but not the members of the Appeals Tribunal.

Indemnification of the members of WCB boards of directors is commonly found in workers' compensation legislation of other jurisdictions. The Panel agrees that members of the WCB Board of Directors should be protected from liability for actions taken honestly and in good faith. The Panel further believes that this protection should be extended to members of the Appeals Tribunal.

Recommendations: 3.2.8 Liability Protection for the WCB Board of Directors

1. The legislation should be changed to provide specific indemnification for members of the WCB Board of Directors and of the Appeals Tribunal.
2. This indemnification should be limited to the members' performing their duties with the care described in the *Financial Administration Act*, Section 90.

3.2.9 Authority to Enter into Agreements

The Panel was advised that the *Acts* limit the ability of the WCB Board of Directors and WCB to enter into agreements with parties who are not specified in the *Acts*. For example, other agencies or governments may have specialized expertise that the WCB may wish to engage.

The Panel is surprised that the WCB is unable to enter into agreements to administer the *Acts* without specific enabling provisions. It seems to the Panel that if the WCB needs to enter into agreements with other parties to properly administer the *Acts*, then the WCB should be able to do so. The WCB will be held accountable for decisions related to administration, including administration conducted under agreements with other parties.

The Panel's only concern related to the confidentiality of stakeholder information held by the WCB – for example, medical information about injured workers, or proprietary employer information. The Panel believes that any agreements to share information with others should include the same level of protection contained in the *Acts* to preserve the confidentiality of stakeholder information.

In keeping with the Panel's views on transparency and accountability, we feel any authority should be given to the WCB Board of Directors. The WCB Board of Directors will then decide what, if any, authority it wishes to delegate to the corporate WCB.

Recommendations: 3.2.9 Authority to Enter into Agreements

1. The legislation should be changed to enable the WCB Board of Directors to enter into agreements with other parties for the purpose of administering the *Acts*.
2. The legislation should be changed to enable the WCB Board of Directors to delegate such authority.
3. It is suggested that agreements with other parties cover the protection of confidential stakeholder information.

3.2.10 Authority to Initiate Prosecutions

The Panel was asked to consider recommending legislative change that would give the WCB authority to initiate prosecutions under the *Acts*. The Crown Prosecutor's Office now undertakes prosecutions for offences, such as fraud, under the *Acts*. There appears to be concern that the Crown Prosecutor may not undertake or pursue a prosecution for its own reasons – reasons with which the WCB does not agree.

A small minority of other jurisdictions has limited authority to prosecute alleged offenders.

The Panel strongly believes that workers' compensation systems should not be adversarial. The introduction of any authority to prosecute alleged offenders flies in the face of this belief. The focus of WCB officials should be on administering the *Acts* and not taking on the job of the Crown Prosecutor.

3.2.11 Peace Officer Status for WCB Official

The Panel was asked to consider recommending legislative change that would confer "peace officer" status to a WCB official. Police officers, the RCMP in the NWT and Nunavut, and, for certain purposes, by-law officers are examples of those that hold the responsibilities and authorities of a peace officer.

Legislation in 2 other jurisdictions confers peace officer status on WCB officials.

For the reasons given in Section 3.2.10, Authority to Initiate Prosecutions, the Panel does not recommend legislative change to confer peace officer status to a WCB official.

3.2.12 Authority to Own Real Property

The Panel was asked to consider recommending a legislative change that would enable the WCB to own and sell real property. Respondents to the Stakeholder Questionnaire did not think this authority should be granted to the WCB. Stakeholders expressed the opinion that the WCB should concentrate on administering the *Acts* rather than getting into the real estate market.

The Panel reviewed Subsection 60(1) which limits the type of investments the WCB can make. The Panel concluded that any buying or selling of real property must be for operational purposes and based on a business case to minimize expenditures - for example, purchasing an office building rather than leasing office space.

The Panel is recommending that legislation be changed to require that the Accident Fund be fully funded (Recommendation 3.9.1, Fully Funded Accident Fund). Within the context of this recommendation, and the provisions of Subsection 60(1), the Panel feels that the WCB should be permitted to buy or sell real property. The Board of Directors will be held accountable for decisions related to real property transactions.

Recommendation: 3.2.12 Authority to Own Real Property

1. The legislation should be changed to enable the WCB Board of Directors to buy or sell real property for operational purposes. This recommendation is subject to acceptance of Recommendation 3.9.1 Fully Funded Accident Fund.

3.3 WCB Board of Directors

The Ministers responsible for workers' compensation and safety have entered into an interjurisdictional agreement on behalf of the Governments of the NWT and Nunavut. This interjurisdictional agreement establishes the terms and conditions under which the NWT Minister, the WCB Board of Directors, the WCB, and the Appeals Tribunal will administer the *Workers' Compensation Act* (Nunavut). In November 2001, the Ministers amended the agreement to state that it will remain in force indefinitely or until either government wishes to revisit the terms of the agreement. Therefore, the NWT and Nunavut WCB is responsible for administering a workers' compensation system in both territories under the applicable *Act*.

3.3.1 Size of the WCB Board of Directors

This is an outstanding issue from previous reviews. Respondents to the Stakeholder Questionnaire do not think current membership of 7 members, including a chairperson, needs to change. The Panel agrees.

3.3.2 Authority to Appoint the WCB Board of Directors

This is an outstanding issue from previous reviews. Subsection 2(1) of the *Acts* states the NWT Minister will appoint the WCB Board of Directors. Subsection 2(2.1) states that 2 of these appointments will be made on the recommendation of the Nunavut Minister.

The vast majority of respondents to the Stakeholder Questionnaire felt that the Ministers should be required to consult with stakeholders before making their recommendations or appointments. A significant majority of respondents thought that the Minister should have to take the advice of stakeholders about appointments. Respondents identified groups who represent workers, injured workers and employers as the stakeholders who must be consulted and whose advice must be taken.

The legislation in other jurisdictions varies. Some require consultation about appointments. Some specify that boards of directors must include representatives of workers and employers.

The Panel considered 2 approaches:

- i) The Minister must seek advice or nominations from representative stakeholder groups. However, the Minister is not obligated to take the advice or appoint individuals nominated by stakeholder groups.
- ii) The Minister must make their appointments only from the nominees of representative stakeholder groups.

The Panel concluded that the Minister should seek the advice of stakeholders. However, the Minister, not representative stakeholder groups, is the one held accountable for appointments and should not be bound to take their advice.

The Panel defines stakeholders as workers and employers. The Panel felt that representatives of injured workers are included in representatives of workers. The Panel did not feel that the composition of the WCB Board of Directors should be stated in legislation.

Recommendation: 3.3.2 Authority to Appoint the WCB Board of Directors

1. The legislation should be changed to require the Ministers to consult with representatives of workers and employers before making their appointments or recommendations on appointments to the WCB Board of Directors.

3.3.3 Representatives from Nunavut on the WCB Board of Directors

Some stakeholders raised a question about the number of members from Nunavut on the WCB Board of Directors. The *Acts* state that 2 appointments must be made on the recommendation of the Nunavut Minister as long as an interjurisdictional agreement is in place between the Governments of the NWT and Nunavut.

Respondents to the Stakeholder Questionnaire provided various opinions. There was no clear majority of opinion.

The Panel feels the interjurisdictional make-up of the WCB Board of Directors is best left to the 2 Governments.

3.3.4 Appointment of Chairperson

This is an outstanding issue from previous reviews. Subsection 2(2) states that the NWT Minister will designate a chairperson from among the members of the WCB Board of Directors.

A significant majority of respondents to the Stakeholder Questionnaire thought the Minister should have advice before appointing the Chairperson. The source of that advice included the Nunavut Minister, the WCB Board of Directors, and/or representatives of workers, employers, and injured workers.

The Panel agreed that the NWT Minister should be required to seek advice before making the appointment.

The Panel considered 2 approaches:

- i) The NWT Minister could appoint the chairperson on the advice of the Nunavut Minister.
- ii) The NWT Minister could appoint the chairperson on the advice of the WCB Board of Directors and representatives of workers and employers.

The Panel concluded that stakeholders have already provided the Ministers with advice about the appointment of members of the WCB Board of Directors. By definition, the chairperson must be a member of the WCB Board of Directors. The 2 Ministers are the

ones held accountable for a decision to appoint the chairperson. They should be free to seek additional advice from whomever they wish.

Recommendation: 3.3.4 Appointment of Chairperson

1. The legislation should be changed to require the NWT Minister to consult with the Nunavut Minister before appointing the Chairperson of the WCB Board of Directors.

3.3.5 Vice-Chairperson for the WCB Board of Directors

The Panel was asked to consider a change to legislation to enable the appointment of a Vice-Chairperson of the Board of Directors.

The legislation in the vast majority of other jurisdictions provides for the appointment of a vice-chairperson. Of the 3 that do not, 2 have legislative provisions for the appointment of an acting chairperson. The authority to appoint varies among jurisdictions, but is usually the Minister, Chairperson, or Board of Directors.

The Panel sees the sense of having a vice-chairperson available to act when the Chairperson is not available. The Panel does not expect this situation will occur that often. However, having a designated person available to step in for the Chairperson would remove any operational inconvenience. The Panel does not see another role for the Vice-Chairperson.

The Panel is of the view that the Board of Directors should appoint the Vice-Chairperson from among their number. The Panel believes the Board of Directors is in the best position to decide how the position of Vice-Chairperson could be used - for example, for Board training and development.

Recommendations: 3.3.5 Vice-Chairperson for the WCB Board of Directors

1. The legislation should be changed to provide for the appointment of a Vice-Chairperson by the WCB Board of Directors from among their number.
2. The legislative change should not describe a role for the Vice-Chairperson other than acting on the Chairperson's behalf during the Chairperson's absence.

3.3.6 WCB Board Members' Term of Office

A review of the term of office for WCB Board of Directors members is an outstanding issue from previous reviews. It was also raised during the Panel's consultation phase. The Acts provide for terms up to 5 years. Members may be reappointed.

The legislation in other jurisdictions provides for terms of 1 up to 5 years; most provide for reappointment of members, and two jurisdictions specify the maximum length of service.

The majority of respondents to the Stakeholder Questionnaire thought the term for members of the WCB Board of Directors should be set in legislation, with approximately half suggesting 3 years.

The Panel believes that the continuity and stability of the WCB Board of Directors needs to be balanced with the introduction of fresh ideas and leadership.

Recommendations: 3.3.6 WCB Board Members' Term of Office

1. The legislation should be changed to appoint members of the WCB Board of Directors for a term up to 3 years. The Panel urges the Minister to consider staggered terms to provide continuity and stability on the WCB Board of Directors.
2. The legislation should be changed to enable the reappointment of members of the WCB Board of Directors to a maximum of 6 consecutive years of service. Former

members may be reappointed to the WCB Board of Directors after a 1 year break in service.

3.3.7 Remuneration of the WCB Board of Directors

The *Acts* provide that the Minister sets the remuneration for members of the WCB Board of Directors, including the Chairperson. The Minister is not obliged to publicly disclose his decision on remuneration. This lack of disclosure was raised as a concern during the Panel's public hearings.

The Panel agrees the Minister should set the remuneration for WCB Board members. The practice in the vast majority of other jurisdictions is to publicly disclose the amount of remuneration paid to members of boards of directors. Given its concern about transparency, the Panel agrees with the approach in other jurisdictions and the advice received during the public hearings.

The Panel did not see a Vice-Chairperson having any additional role on the WCB Board of Directors unless they were acting for the Chairperson (Section 3.3.5, Vice-Chairperson for the WCB Board of Directors). Therefore, the Panel does not see a difference in the remuneration for the position of Vice-Chairperson.

The Panel noted that the legislation does not require the Minister to publicly disclose the remuneration for members of the Appeals Tribunal. In keeping with the Panel's position for public disclosure of the remuneration paid to the Chairperson and WCB Board of Directors' members, the Panel believes the same approach should be applied to the Appeals Tribunal.

Recommendations: 3.3.7 Remuneration of the WCB Board of Directors

1. The legislation should be changed to require the Minister to set the remuneration for members of the WCB Board of Directors, including the Chairperson, in regulation.

2. The legislation should be changed to require the Minister to set the remuneration for the Vice-Chairperson when the Vice-Chairperson is acting for the Chairperson in regulation.
3. The legislation should be changed to require the Minister to set the remuneration for members of the Appeals Tribunal, including the Chairperson, in regulation.

3.4 Stakeholder Advisors

In principle, the Panel believes there should not be a need for stakeholder advisors. If those administering the legislation are doing so in a manner that embodies the spirit and intent of the Meredith Principles and treats stakeholders with the respect and compassion that is deserved, why is another layer of bureaucracy required? The WCB administration should all be stakeholder advisors. The Panel understands that administrators can make mistakes. However, this is why there is an appeals process.

Stakeholder advisors are not going to address the inherent problems with administration or legislation that have come to the Panel's attention.

As stated earlier in Section 2.5, Operational Versus Legislative Issues, the Panel believes that an independent operational review is required immediately to examine the operational and administrative issues brought to the Panel's attention. The Panel further believes that until the legislative issues brought to the Panel's attention have been resolved and the spirit and intent of the legislative direction is reflected in the administration of the *Acts*, there is a reason to continue with stakeholder advisors in some form.

3.4.1 Compensation Advisor

It was suggested to the Panel that instead of a workers' or employers' advisor, the position of "compensation advisor" should be legislated. Respondents to the Stakeholder Questionnaire were evenly split on this suggestion.

Some suggested that having a compensation advisor would make better use of resources by dealing with both workers and employers. There is no employers' advisor at present.

Others suggested that there will be occasions when the interests of a worker and employer are in conflict. A compensation advisor would not be able to assist both stakeholders in this situation without the perception (or reality) of a conflict of interest.

The Panel does not recommend the establishment of a compensation advisor.

3.4.2 Workers' Advisor

All but 1 jurisdiction have some form of workers' advisor. Of these, most have established the workers' advisor office (WAO) in legislation. The responsibilities of these workers' advisors vary.

The vast majority of respondents to the Stakeholder Questionnaire said there should be an advisor for workers.

For the reasons given in Section 3.4, Stakeholder Advisors, the Panel agrees with the continuation of the workers' advisor position.

Stakeholders and respondents told the Panel that the position of workers' advisor should be established in legislation. Most felt that the responsibilities of the workers' advisor should be described in legislation. The commonly accepted responsibilities included:

- Providing advice;
- Obtaining information for workers;
- Explaining the legislation, policy, and procedures for workers' compensation;
- Assisting a worker in communications with the WCB;
- Providing information about community services; and
- Speaking for workers during the appeals process.

Many stakeholders told the Panel the WAO should get involved in providing or assisting injured workers in obtaining legal counsel. About half of the respondents to the Stakeholder Questionnaire thought the WAO should be involved in providing or obtaining legal counsel for workers. The Panel does not agree. As stated earlier, the Panel is concerned about any trend that would reinforce an adversarial climate.

Stakeholders and respondents thought that the WAO should be independent of the WCB. There was no unanimity about the characteristics of independence – for example, having the WAO hired by a government department and not anyone associated with the WCB like the WCB Board of Directors. The Panel does not have an opinion about whether the WAO should be hired as an employee or engaged as a contractor. However, the Panel feels strongly that however the WAO is engaged, the process must be transparent and independent of the WCB administration.

Stakeholders and respondents thought the WAO should be required to report on their activities. There was no unanimity on the process for reporting, such as a report to the Minister or WCB Board of Directors that is available to the public. The Panel agrees the WAO should report on activities to ensure accountability to stakeholders.

Stakeholders told the Panel that the WAO does not have sufficient resources to deal with the volume of work. Some stakeholders and respondents told the Panel that there should be another WAO in Nunavut. The Panel does not take a position on what we see as an operational issue. The Panel suggests that the WAO should, at a minimum, provide services in Inuktitut.

While the Panel looks forward to the day when a workers' advisor is not required, we think that the legislation should require the establishment of this position.

Recommendations: 3.4.2 Workers' Advisor

1. The legislation should be changed to require the establishment of a Workers' Advisor, independent of the WCB administration, and appointed by the WCB Board of Directors.
2. The legislation should be changed to include the requirement for the Workers' Advisor to make an annual report to the WCB Board of Directors and stakeholders.
3. It is suggested that the WCB Board of Directors use a transparent process for the engagement of the Workers' Advisor.
4. It is suggested that the ongoing requirement for a Workers' Advisor be considered in the reviews recommended in Section 3.2.6, Regular Reviews of the *Workers' Compensation Acts*.

3.4.3 Employers' Advisor

Some stakeholders told the Panel that employers need assistance in dealing with the WCB administration. The majority of respondents to the Stakeholder Questionnaire thought there should be an employers' advisor.

The majority of other jurisdictions do not have an employers' advisor. For those that do, there is no consistency in the source of funds to pay for the employers' advisor or for the reporting relationship of employers' advisors. The Panel does not recommend the establishment of an employers' advisor, in legislation or otherwise, for the reasons stated in Section 3.4, Stakeholder Advisors.

3.5 Review and Appeals Process

If a worker (or dependant) or employer does not agree with a decision of the WCB administration, they have access to an appeals process. The first step in the appeals process is the Review Committee. The Review Committee is an internal committee within the WCB. The legislation provides that with the approval of the WCB Board of Directors, the Review Committee may hear representations on behalf of the appellant. It is understood that the WCB Board of Directors has, by policy, made a decision that

review committees shall conduct "documentary reviews" only and not hear representations from appellants. The Review Committee may confirm, vary, or reverse decisions of the WCB administration.

The second step in the appeals process is the Appeals Tribunal. The NWT/Nunavut Appeals Tribunal is established in legislation. The Appeals Tribunal has exclusive jurisdiction to hear appeals from the Review Committee. It may confirm, reverse, or vary a decision of the Review Committee. The authority to appoint members and the composition of the Tribunal are also described in the *Acts*.

3.5.1 Review Committee

Some stakeholders have suggested to the Panel that the Review Committee be eliminated and replaced with a dispute resolution process similar to that recommended in the Final Report of the Review Committee of the Workers' Compensation Board Appeal Systems chaired by Samuel Friedman, QC (the Friedman Report). This report was completed in November 2000. The majority of respondents to the Stakeholder Questionnaire did not think the Review Committee should be eliminated.

All but 2 jurisdictions have some form of internal review process as the first level of the appeal process. In these jurisdictions, the process for review is not always described in detail in legislation.

The *Acts* do not describe the Review Committee per se. Sections 24 and 64 enable a worker, employer, or dependant to appeal a decision to the Review Committee. Section 24(1) states that the Review Committee is appointed by the Board (whether WCB Board of Directors or corporate WCB is unclear), and with the consent of the Board, hears representations on behalf of the appellant. The *Acts* state that the Review Committee will only review decisions related to compensation and assessment.

The WCB Board of Directors made the policy decision not to consent to any representations to the Review Committee. The Review Committee can only conduct documentary reviews. The Review Committee will refer any new information provided by an appellant back to the WCB administration to see if it changes the original decision before conducting its review.

The various reasons given by stakeholders for eliminating the Review Committee include:

- Review Committee members do not have the special knowledge required to perform a review function.
- The Review Committee takes too narrow a view of the issues before them, including the application of WCB Board of Directors' policy.
- There is a perception that Review Committee members are biased. For example, Review Committee members use the same professional advisors as the initial decision-maker.
- The review process takes too long.

The Panel accepts that the reasons given have merit. However, the Panel sees most of the concerns as operational problems that can be addressed, whether by a change in attitude, training, or the hierarchical placement of Review Committee members within the WCB organization. The length of time a review takes is addressed in Section 3.5.5, Time Limits in the Appeal Processes.

The Panel believes that an internal review of decisions by the WCB makes sense. However, in keeping with the Panel's earlier observations about transparency, natural justice, and an adjudicative as opposed to adversarial approach, the Panel believes the Review Committee must be seen to act fairly and independently from those making decisions within the WCB administration.

Recommendations: 3.5.1 Review Committee

1. The legislation should be changed to define the Review Committee as an internal committee of the WCB, appointed by the WCB Board of Directors.
2. The legislation should be changed to include the purpose of the Review Committee that is, upon written submission of a worker, dependant, or employer, to objectively review WCB administration decisions regarding financial, medical, or vocational rehabilitation compensation and assessment.
3. The legislation should be changed to require the Review Committee to hear representations from appellants who wish to make them.
4. The legislation should be changed to apply WCB Board of Directors' policy where applicable.

3.5.2 *Conflicting Medical Opinion*

The Panel heard a great deal about how conflicting medical opinions are handled now, and how they should be handled. Conflicting medical opinions were usually between an injured worker's health care provider and the WCB's medical advisors.

The *Acts* enable the Review Committee to call for a medical examination of an injured worker for review purposes. The *Acts* do not specifically enable the Appeals Tribunal to call for a medical examination of an injured worker. The *Acts* do enable the Appeals Tribunal to establish its own rules of practice and procedure. The *Acts* do not require the involvement of the injured worker in selecting the health care provider or medical assessment facility for these additional examinations.

Many stakeholders told the Panel that they thought there should be some means to resolve differences of medical opinion between treating health care providers, specialist health care providers, and the WCB medical advisors. Some stakeholders suggested that the Panel consider recommending medical resolutions committees for this purpose. They referred to the Friedman Report, which recommends the establishment of medical

resolutions committees, under the auspices of the Appeals Tribunal, as an approach to follow. Other stakeholders advised the Panel not to consider medical resolutions committees because such committees add another layer of bureaucracy to the workers' compensation system, and because of the cost of operating such committees.

Respondents to the Stakeholder Questionnaire thought that medical resolutions committees would be a good way to resolve conflicting medical opinion. They generally thought such committees should come under the auspices of the Appeals Tribunal. They also thought the decision of such committees should be final.

The Panel is concerned about the adversarial tone surrounding the discussion of conflicting medical opinion. The Panel is also concerned about adding another layer of bureaucracy to the workers' compensation system. The Panel did not get the sense that the presumption in favour of an injured worker has been applied by the WCB when assessing conflicting medical opinion.

The Panel is not recommending the establishment of medical resolution committees. The Panel does accept that there are serious problems in the way conflicting medical opinion is assessed in the administration of the *Acts*. The Panel believes that more worker involvement in the choice of health care providers to conduct medical assessments is required. The Panel also believes that the WCB, Review Committee and Appeals Tribunal should be assessing conflicting medical opinions in a manner that reflects a presumption in favour of the injured worker and achieving the purpose of the *Acts*. The Review Committee and Appeals Tribunal should also be assessing conflicting medical opinions in an objective manner. If independent medical advice is required to do this, these appeals bodies must have access to independent medical advice.

If the resolution of conflicting medical opinion continues to be an issue, future review panels should reconsider the establishment of medical resolutions committees.

Recommendations: 3.5.2 Conflicting Medical Opinion

1. The legislation should be changed to enable the Appeals Tribunal to require the medical assessment or examination of an injured worker.
2. The legislation should be changed to require the selection of the health care provider for a medical assessment or examination to be a joint decision of the Review Committee or Appeals Tribunal and the injured worker.

3.5.3 Independence of the Appeals Tribunal

The Appeals Tribunal is appointed by the Minister and is composed of 2 members the Minister considers appropriate and additional members appointed in equal number on the recommendation of representatives of workers and employers. Members of the Appeals Tribunal are appointed for terms up to 3 years and may be reappointed.

The Minister appoints a Chairperson and Vice-Chairperson on the recommendation of the Appeals Tribunal. Members of the WCB Board of Directors cannot be members of the Appeals Tribunal.

The Appeals Tribunal has exclusive jurisdiction to hear appeals from decisions of the Review Committee about compensation and assessment. When making decisions, the Appeals Tribunal is required to apply the policy established by the WCB Board of Directors. The Appeals Tribunal may confirm, vary, or reverse a decision of the Review Committee. If the WCB Board of Directors does not think the Appeals Tribunal has properly applied policy or has acted outside the provisions of the *Acts*, the WCB Board of Directors may direct the Appeals Tribunal to rehear an appeal.

There are no time limits in the *Acts* for lodging an appeal, hearing an appeal, or issuing a decision. Within the provisions of the *Acts*, the Appeals Tribunal sets its own rules of operation. The WCB is required to provide the Appeals Tribunal with any documents it has relating to the appeal.

The Appeals Tribunal must give the appellant and other interested parties, such as the WAO, an opportunity to appear before the Tribunal and to present evidence.

Stakeholders and the majority of respondents to the Stakeholder Questionnaire told us about the importance of an independent Appeals Tribunal. That is, independence from the WCB Board of Directors and WCB administration. This independence is crucial to the reality and perception of fair and objective consideration of appeals from workers, dependants, and employers. The Panel agrees.

Stakeholders suggested that measures of independence include:

- Support staff and professional advisors who work for the Appeals Tribunal (and definitely not the WCB).
- Offices physically removed from those of the WCB.
- Final decision-making authority (in other words, no rehearing or stays of Appeals Tribunal decisions).
- No restrictions on the conduct of appeals (in other words, no requirement to apply the policies of the WCB Board of Directors, or only apply policies where applicable).

Some stakeholders linked the qualifications of Appeals Tribunal members to independence. Their reasoning was that unless members have a good understanding of administrative law and legal principles which apply to an appeal process, such as natural justice, the Appeals Tribunal cannot make independent (and informed) decisions without depending on the WCB administration. These are matters for the Minister to consider in his appointment of members and for the Appeals Tribunal itself to consider when setting its rules and operational plans, such as training and development for members. The Panel found several recommendations about the qualifications and training of Appeals Tribunal members made in the Friedman Report to be helpful in this regard. The Panel noted that the legislation was changed to make members of the WCB Board of Directors ineligible for appointment to the Appeals Tribunal. Subsection 7.7(4) appears to be left over from a previous time and should be removed.

The Panel believes that the independence of the Appeals Tribunal is crucial to ensure the integrity of the process. The Panel accepts that the WCB Board of Directors requires some recourse should the Appeals Tribunal misapply their policy or exceed its jurisdiction. Currently, this recourse is the WCB Board of Directors' authority to order a rehearing of an Appeals Tribunal decision. This recourse should not be open-ended. Time limits are discussed in Section 3.5.5, Time Limits in the Appeal Processes.

Recommendations: 3.5.3 Independence of the Appeals Tribunal

1. The legislation should be changed to enable the Appeals Tribunal to hire or contract its own staff and professional advisors (e.g., legal and medical).
2. The legislation should be changed to require the Appeals Tribunal to apply WCB Board of Directors' policy *when applicable*.
3. The legislation should be changed to reinforce the application of natural justice and presumption in favour of an injured worker by the Appeals Tribunal.
4. The legislation should be changed to remove Subsection 7.7(4).

3.5.4 Appointments to the Appeals Tribunal

The NWT Minister appoints members to the Appeals Tribunal within the provisions of Subsections 7.1(1) and (2). Some stakeholders suggested that the NWT Minister should benefit from the advice of the Nunavut Minister and not just representatives of workers and employers. The Panel agrees. In addition, there was a strongly held view of the Panel that the Minister should not be making any appointments without the advice of stakeholders (the Minister can appoint 2 members he feels are appropriate).

Some stakeholders suggested that the Chair of the Appeals Tribunal should be a full-time position. The Panel does not agree with this suggestion. The Panel believes that the need for appeals should lessen when administration of the *Acts* is focused on achieving the stated purpose of the *Acts* in a non-adversarial manner. Should this not occur, we leave it to future review panels to revisit this suggestion.

The Panel considered the establishment of the 2 Appeals Tribunals, one for the NWT and one for Nunavut. Respondents to the Stakeholder Questionnaire were almost evenly split. We concluded that this is a matter for the territorial governments to consider in their interjurisdictional agreement.

The Panel considered the length of appointment for members of the WCB Board of Directors in Section 3.3.6, WCB Board Members' Term of Office and believes the same approach should apply to the Appeals Tribunal.

Recommendations: 3.5.4 Appointments to the Appeals Tribunal

1. The legislation should be changed to require advice from the Nunavut Minister on all Appeals Tribunal appointments.
2. The legislation should be changed to appoint members of the Appeals Tribunal for a term up to 3 years. The Panel urges the Minister to consider staggered terms to provide continuity and stability on the Appeals Tribunal.
3. The legislation should be changed to enable the reappointment of members of the Appeals Tribunal to a maximum of 6 consecutive years of service. Former members may be reappointed to the Appeals Tribunal after a 1 year break in service.
4. The current provision in the *Acts* to enable a member of the Appeals Tribunal to complete their duties if an appeal has started but not finished before the expiry of their term should remain.

3.5.5 Time Limits in the Appeal Processes

Stakeholders and respondents to the Stakeholder Questionnaire told the Panel about the hardship created by the length of time the appeal processes take. They told the Panel that reasonable time limits should mark the steps in the appeals. These steps are:

- Lodging a review.
- Holding a review hearing.
- Reporting on the decision of the Review Committee.

- Implementing a decision of the Review Committee.
- Lodging an appeal.
- Holding an appeal hearing.
- Reporting on the decision of the Appeals Tribunal.
- Implementing a decision of the Appeals Tribunal.

The legislation in 5 jurisdictions currently includes time limits for some of the steps in the appeal processes. Most are directed to the Appeals Tribunal. The Friedman Report recommends introducing time limits, and the Task Force Report on the Workers' Compensation System in Newfoundland and Labrador (February 16, 2001) recommends reducing time limits now contained in legislation.

The Panel accepts the need for time limits on the steps in the appeals processes with one exception. The *Acts* do not place a time limit for a worker, dependant, or employer to ask for a review of a decision by WCB administration. The Panel considered recommending time limits for requesting a review. The Panel was concerned that with the changing WCB environment (e.g., medical technology), new evidence that affects a decision might not come to light in a timely fashion. This concern outweighed the Panel's concern for the security of the Accident Fund with claims made long after a work-related injury occurred.

The Panel accepts that there are times an appellant might wish to extend the required time limits – for example, to present new evidences that cannot be gathered or has not come to light within the required time frame.

It should be clear that the time limits the Panel is recommending also apply to any stay or order for rehearing from the WCB Board of Directors.

Recommendations: 3.5.5 Time Limits in the Appeal Processes

1. The legislation should be changed to set the following time limits for the steps in the review and appeal processes:
 - a) From the time a request for review is received, the Review Committee has up to 30 days to hold a review hearing.
 - b) The Review Committee shall make a decision and issue its report within 7 days after conclusion of the review hearing.
 - c) From the time the WCB receives the report of the Review Committee, it has up to 30 days to implement the decision.
 - d) From the time a request for appeal is received, the Appeals Tribunal has up to 60 days to hold an appeal hearing.
 - e) The Appeals Tribunal shall make a decision and issue its report within 30 days.
 - f) From the time the WCB receives the report of the Appeals Tribunal, it has up to 30 days to implement the decision.
2. The legislation should be changed to enable an appellant to request a delay by the Review Committee and Appeals Tribunal in holding a hearing. If the appeals body does not agree to the delay, the appellant may withdraw their request for review or appeal without prejudice and resubmit it at a later date. The time limits on the appeals process recommence on the date of resubmission.

3.5.6 Exclusive Jurisdiction of the Appeals Tribunal

Stakeholders asked the Panel to consider the exclusive jurisdiction of the Appeals Tribunal for hearing appeals about Review Committee decisions. Section 7.9(2) states that a decision of the Appeals Tribunal is not subject to review or question in any court.

The Panel takes the same position for the Appeals Tribunal as for the WCB itself (as discussed in Section 3.2.1 Exclusive Jurisdiction of the Workers' Compensation Board). The WCB's exclusive jurisdiction is limited if the WCB denies natural justice or

exercises an excess of jurisdiction. The Panel feels the Appeals Tribunal should be subject to the same limitations.

Recommendation: 3.5.6 Exclusive Jurisdiction of the Appeals Tribunal

1. The legislation should be changed to limit the exclusive jurisdiction of the Appeals Tribunal should natural justice be denied or should the Appeals Tribunal exceed its jurisdiction.

3.5.7 Award of Costs

The Panel was asked to consider a recommendation to give the Appeals Tribunal the authority to award costs to an appellant, particularly legal costs. The Panel does not accept this suggestion. One of the major themes found in the Panel's recommendations is to remove the adversarial attitude that has crept into the workers' compensation system. A recommendation to award costs for lawyers is not consistent with the body of the Panel's recommendations.

3.5.8 Outstanding Appeals

The Panel was asked to consider a recommendation to establish a special appeals tribunal to deal with appeals that have been outstanding for some time. The Panel considers this to be an operational issue for the Minister and Appeals Tribunal to address. The *Acts* provide for the appointment of an unlimited number of Appeals Tribunal members.

3.5.9 Use of Appeals Tribunals in Other Jurisdictions

The Panel was asked to consider using appeals tribunals in other jurisdictions rather than the NWT/Nunavut Appeals Tribunal. The reasons given for this include the small size of the territories and the challenge of appointing members who are not only qualified but are seen to be acting without bias. The Panel does not accept the suggestion. We feel there is a pool of qualified people who can perform the duties of an Appeals Tribunal member in a fair and unbiased manner. The members of appeals tribunals in other jurisdictions

are not familiar with some of the unique situations found in the NWT/Nunavut workers' compensation environment.

3.6 Compensation

Compensation includes financial, medical, and vocational rehabilitation provided to injured workers and the dependants of deceased workers.

3.6.1 Compensable Injuries and Industrial Diseases

The *Acts* define an industrial disease but do not define a work-related injury. Some stakeholders suggested to the Panel that this is problematic since the term "injury" is used routinely throughout the *Acts*. The Panel agrees. The Panel believes the definition should be simple: A work-related injury is the physical and mental effects of a work-related accident.

Stakeholders told the Panel of their strongly held views about the types of work-related injuries that they feel should or should not be compensable. We heard submissions in favour of including chronic pain, occupational stress, the effects of workplace harassment and alcohol abuse. We heard submission opposing the inclusion of occupational stress, the effects of workplace harassment and alcohol abuse.

Respondents to the Stakeholder Questionnaire were also divided in their views. The majority of respondents thought chronic pain should be considered a compensable injury. A slight majority of respondents thought occupational stress should be considered a compensable injury. The majority of respondents did not think workplace harassment or alcohol abuse should be considered compensable injuries.

It is interesting to note that only 3 jurisdictions define "injury." Two (2) of those definitions include similar words to those used to define "accident" in 8 other jurisdictions, including the NWT/Nunavut. Three (3) jurisdictions specifically exclude occupational stress from their definition of accident or injury.

The way workers' compensation boards deal with claims related to chronic pain and occupational stress varies among jurisdictions.

All jurisdictions, including the NWT/Nunavut, have provided compensation (usually medical treatment) for chronic pain. There may be time limitations placed on such compensation. Some jurisdictions provide temporary financial compensation for chronic pain. A few jurisdictions will consider permanent financial compensation. Many jurisdictions are reviewing their legislation and policies related to compensating injured workers for chronic pain.

The situation with occupational stress also varies among jurisdictions. Where occupational stress is considered compensable, compensation is explicitly limited in legislation to acute or post-traumatic stress syndrome. It may also be considered as a temporary injury or disease. As with chronic pain, many jurisdictions are reviewing their legislation and policies related to occupational stress.

The way in which the NWT/Nunavut WCB deals with chronic pain and occupational stress is governed by policy. The WCB provides medical compensation in the form of treatment at a pain clinic. An injured worker is eligible for temporary financial compensation. If the chronic pain is based on a demonstrable organic cause, permanent financial compensation may be considered.

The way in which the NWT/Nunavut WCB deals with occupational stress is governed by policy. Only acute or post-traumatic stress is eligible for compensation.

It is clear to the Panel that the workers' compensation environment related to chronic pain and occupational stress is a changing one. It is also clear that one of the major concerns of workers' compensation boards when addressing these and other "injuries" or occupational diseases is increased costs.

The Panel was interested in the Ontario approach to chronic pain. Ontario has decided to provide compensation (medical and financial) for chronic pain in the same manner as other work-related injuries. However, it will revisit this decision in 5 years to assess the scientific evidence on the "work-relatedness" of chronic pain, developments in workers' compensation legislation, and the effectiveness of its prevention and management strategies for chronic pain. In the interim, the Ontario WCB is also supporting research into the treatment and management of chronic pain.

The Panel is not in a position to make a judgement about the compensability of chronic pain and occupational stress. We have neither the medical knowledge to assess these conditions nor the specialized financial knowledge to assess the actuarial effects of a change to legislation or policy on the Accident Fund (and any consequent change to assessments).

The Panel believes that the WCB Board of Directors is the appropriate body to make decisions on whether certain injuries or diseases are compensable. The Board of Directors will be held accountable for those decisions. The Panel does think that the WCB Board of Directors needs to actively review the developments in other jurisdictions and make an informed decision about its position on the submissions of stakeholders to compensate injured workers for chronic pain, occupational stress, workplace harassment, and alcohol abuse.

Recommendations: 3.6.1 Compensable Injuries and Industrial Diseases

1. The legislation should be changed to define injury or work-related injury.
2. The WCB Board of Directors is urged to consider the submissions of stakeholders related to chronic pain, occupational stress, workplace harassment, and alcohol abuse and make a decision on their compensability.

3.6.2 System of Financial Compensation

The *Acts* provide for a system of temporary and permanent financial compensation.

The amount of temporary financial compensation is based on a calculation to replace an injured worker's wages while they are recovering from a work-related accident or disease. This is called a wage loss approach.

The calculation starts with the worker's "remuneration" as defined in the *Acts* (wages, overtime, etc.) to a maximum of the Year's Maximum Insurable Remuneration (YMIR). Statutory deductions, such as income tax and Canada Pension Plan contributions, are subtracted from the worker's remuneration or YMIR, whichever is less, to come to a figure for a worker's net pay. The temporary financial compensation is 90% of the net pay. The net pay is reduced by 10% because an injured worker will not incur expenses associated with working, such as, transportation costs to and from the workplace. This reduction is standard among other jurisdictions and ranges from 10% to 25% of net income and, in 2 jurisdictions, 25% of gross income.

The amount of permanent financial compensation is based on a calculation that involves the percentage of disability or impairment the injured worker will always experience as a result of the work-related injury or disease. This approach is called an impairment or disability approach.

The calculation starts with the injured worker's remuneration, to a maximum of the YMIR, less statutory deductions, to arrive at the worker's net remuneration. The percentage by which the worker is impaired or disabled is applied to 90% of the net remuneration and results in the amount of the permanent pension. The WCB uses something called the Permanent Medical Impairment Guide that describes physical and psychological impairment and assigns a numerical percentage to these impairments.

Workers' compensation payments are not income and as such are not subject to territorial, provincial or federal income taxes. A worker cannot contribute to income-based insurance programs or pensions, such as Employment Insurance or the Canada Pension Plan, because compensation payments are not considered income.

Some stakeholders told the Panel that permanent pensions should not be based on the degree of physical impairment that a worker has experienced as a result of a work-related injury. They argued that in some cases, a physical impairment is not a measure of wages lost. They also pointed out that the workplace has changed and many jobs are not now based on physical ability. Other stakeholders told us that even if a worker can continue working with a physical disability or impairment, the worker has still lost something that can never be recaptured and therefore the worker should be financially compensated.

The majority of respondents to the Stakeholder Questionnaire thought that a wage loss approach was better than a physical impairment or disability approach.

All jurisdictions use the wage loss approach for temporary financial compensation. All other jurisdictions but British Columbia use a form of wage loss as the basis for longer term or permanent financial compensation. Eight jurisdictions include some form of financial compensation, usually a lump sum, for permanent physical or psychological impairment.

With a wage loss approach, there is an ongoing relationship between the injured worker and the WCB. The amount of financial compensation is reviewed at regular intervals to determine whether the injured worker is capable and able to return to the workforce. Obviously, if an injured worker is earning wages, there is no need to compensate for a loss of wages.

The terminology used to describe the wage loss system in other jurisdictions varies. Terms like wage loss, earnings loss, impairment of earnings capacity, loss of earning capacity, loss of earnings and income replacement indemnity are variously used.

The Panel believes the legislation should be changed to incorporate a wage loss approach as the basis for temporary, ongoing or permanent financial compensation. We think also think there should be some financial compensation for permanent physical or psychological impairment or disability. This may be in the form of a lump sum payment or an ongoing pension depending on the severity of the loss and the best interests of the worker.

The Panel has no view about what legal terminology should be used in the legislation. However, we are clear on the intent of the legislation. The objective of financial compensation is to replace the wages an injured worker has lost as a result of a work-related accident or disease until such time as the injured worker is capable of returning and able to return to the workplace. This objective assumes an injured worker's desire to return to work.

There will be many changes in the way the WCB will interact with injured workers under a wage loss system. The WCB will have to be creative in programs designed to assist an injured worker to return to the workplace. Programs to "top up" wages should be considered. Vocational rehabilitation compensation will take on more importance. Injured workers will have to accept a closer relationship with the WCB to monitor their progress during recovery. However, based on the many comments made to the Panel about the importance of returning to the workplace, we think injured workers will see the need for this closer relationship.

Recommendations: 3.6.2 System of Financial Compensation

1. The legislation should be changed to make wage loss the basis for temporary, ongoing, and permanent financial compensation.
2. The legislation should be changed to include financial payment for permanent partial or total impairment or disability. Consideration should be given to lump sum payments. See also Recommendation 3.6.8, Commutations.

3.6.3 Year's Maximum Insurable Remuneration (YMIR)

When the Meredith Report was presented, it recommended placing a maximum amount for the payment of financial compensation. All jurisdictions contain reference to what is usually called the YMIR. The effect is to limit compensation calculations to actual wages or the YMIR, whichever is less.

The NWT and Nunavut *Acts* set the amount of YMIR at \$63,350.

Some stakeholders told the Panel that YMIR should be eliminated and the calculations for compensation should be based on an injured worker's actual wages. Some stakeholders agreed that there should be a maximum amount used in the calculation of financial compensation but that the current YMIR is too low. Some stakeholders told that Panel that because YMIR is established in legislation, it takes too long to change YMIR when economic conditions change.

The majority of respondents to the Stakeholder Questionnaire thought that actual wages should be used in calculating financial compensation. Respondents were divided as to whether the Legislative Assembly, Minister, or WCB Board of Directors should have the authority to set YMIR. The majority of respondents did think YMIR should change automatically when there is a change in accepted economic indicators like the Consumer Price Index. Respondents were about evenly split in their views about establishing a year's minimum insurable remuneration.

The Panel believes that there is a need for a YMIR. It will never match the wages of the highest paid worker in the NWT or Nunavut. It should, however, provide a reasonable cap and generally reflect wages paid in the NWT and Nunavut.

The Panel also believes there should be a year's minimum insurable remuneration. In exceptional circumstances, an injured worker may be "worse off" by receiving financial compensation for a work-related injury than by receiving income support. This is not in

keeping with the objective of workers' compensation. Since the Panel believes this situation will occur infrequently, the Panel does not see assessing employers on anything other than actual insurable payroll.

The Panel agrees that the method of setting YMIR should be one that can respond to changing conditions in a timely fashion. Section 52 obliges the WCB Board of Directors to annually review the YMIR and make recommendations to the Minister. The Panel believes the Minister should have the authority to act on these recommendations and change the YMIR if appropriate. Some stakeholders have suggested that those receiving financial compensation should be advised about the timing for recommendations to the Minister. This would enable them to offer advice to the WCB Board of Directors and/or the Minister. This is an interesting suggestion and in keeping with the Panel's views on transparency. However, the Panel sees this as an operational issue for the WCB Board of Directors to address.

Recommendations: 3.6.3 Year's Maximum Insurable Remuneration (YMIR)

1. The legislation should be changed to enable the Minister to prescribe the amount of YMIR by regulation, on the advice of the WCB Board of Directors.
2. The legislation should be changed to define a year's minimum insurable remuneration and enable the Minister to prescribe this amount by regulation, on the advice of the WCB Board of Directors.
3. It is suggested that the WCB Board of Directors review the current YMIR with a view to ensuring that it fairly reflects the of wages in the NWT/Nunavut.

3.6.4 Special Purpose Financial Compensation

The Acts enable the payment of compensation, over and above financial compensation for lost wages or impairment, for a number of special purposes. These include a clothing allowance, compensation to assist the injured worker in maintaining their quality of life, compensation for dependants and for funeral expenses (Sections 35, 51 and 53).

The *Acts* are very specific in some instances – for example, pay an allowance up to \$100 a year to replace clothing damaged by a prosthesis or appliance. In others the legislation is very general – for example, make expenditures to assist in lessening any handicap resulting from a work-related injury.

Stakeholders urged the Panel to recommend increases to the amount of compensation in these special purpose areas. They also urged the Panel to recommend the application of common sense and compassion in the interpretation of legislation or policy. Many stakeholders said they thought entitlements should be spelled out in legislation so they did not have to go begging for compensation to pay for items such as cushions for wheelchairs.

Other jurisdictions also provide for special purpose compensation. The basis for calculation varies. The authority for setting the type and amount of special purpose compensation also varies. Some jurisdictions include certain compensation in legislation, others in regulation, and others in policy.

The majority of respondents to the Stakeholder Questionnaire thought the allowance for clothing should be increased and the interpretation widened to include damage from other medical equipment, such as wheelchairs.

The Panel has said that it prefers to see legislation providing a framework for workers' compensation. The WCB Board of Directors should then establish policies within that framework to implement the legislation in a manner that is directed toward the legislative purpose. In keeping with that position, the Panel believes that the details of special purpose compensation for things like clothing allowances, funeral expenses, and quality of life should be removed from legislation and established in policy.

The Panel urges the WCB Board of Directors to carefully review the type and amount of financial compensation for these purposes with a view to increasing compensation. The

Panel also urges the WCB to implement the policies in a manner that ensures that injured workers and their dependants have easy access to information about their entitlements.

The Panel is concerned that financial compensation for dependants of deceased workers has not been reviewed in many years. The amount of compensation is tied to the YMIR, so the actual payments have increased as the YMIR has increased. The Panel is recommending a review of the amount of YMIR by the WCB Board of Directors.. During this review, the effects on dependant compensation should also be taken into account.

The Panel is concerned about the discretion accorded to the WCB in Section 37 concerning the payment of financial compensation to dependant children over 16 who are attending school. The Panel cannot identify any circumstances, other than those listed, when payment would not be made.

Recommendations: 3.6.4 Special Purpose Financial Compensation

1. The legislation should be changed to direct the WCB to provide financial compensation for clothing allowances, death, and funeral expenses and quality of life payments to normalize the daily life of injured workers. The details of the types and amounts of compensation should be established by the WCB Board of Directors in policy.
2. It is suggested the review of YMIR (Recommendation #3, 3.6.3 Year's Maximum Insurable Remuneration (YMIR)) should take into account the effect on dependants.
3. The legislation should be changed to direct the WCB to pay compensation to dependants under Section 37.
4. It is suggested the WCB Board of Directors review the types and levels of special purpose compensation with a view to increasing the amounts payable.
5. It is suggested the WCB Board of Directors review the implementation of the special purpose compensation programs with a view to ensuring their accessibility and appropriate delivery.

3.6.5 Indexing Compensation by Community

Some stakeholders suggested that the basis for calculating financial compensation should include a factor for the injured worker's community of residence.

The majority of respondents to the Stakeholder Questionnaire disagreed with this suggestion.

No other jurisdictions provide for indexing of financial compensation.

The Panel does not agree with the suggestion and makes no recommendations for change.

3.6.6 Net Annual Remuneration

Some stakeholders suggested that some or all of the statutory deductions (Subsection 39(5)) should not be subtracted from a worker's remuneration when calculating net annual remuneration. They argue that while injured workers are receiving financial compensation, they are not able to contribute to the Canada Pension Plan or apply for Employment Insurance benefits. Contributions to the Canada Pension Plan are based on income. Compensation is not considered income, and this is why it is not taxable, as noted earlier.

The majority of respondents to the Stakeholder Questionnaire thought that income tax should be deducted, with some saying Employment Insurance premiums and Canada Pension Plan contributions should be deducted.

All but 2 jurisdictions use a net annual remuneration for calculating financial compensation.

After consideration, the Panel believes that deducting statutory contributions from wages makes sense. By deducting income tax payable, there is recognition of an injured worker's family status in the amount of financial compensation.

While the Panel agrees that deducting statutory contributions makes sense, the Panel is concerned that an injured worker is prevented from making contributions to the Canada Pension Plan while receiving compensation. In some cases, a long recovery time will significantly reduce the worker's Canada Pension. This situation is governed by federal legislation and beyond the terms of reference of the Panel.

The Panel is concerned that the net annual remuneration of seasonal workers and other workers should reflect any Employment Insurance (EI) payments during the 12 months previous to a work-related accident. Subsection 41(2)(b) provides that the WCB may estimate net annual remuneration for a worker who has been with their employer for only a short period of time, using an average of workers in similar positions over the previous 12 months. This section is discretionary.

The practice in other jurisdictions varies. When calculating net income, a minority of other jurisdictions include EI payments. Of those, the majority include EI payments only when calculating longer term (over 12 to 26 weeks) financial compensation.

The Panel appreciates that assessments have not been paid on EI payments. However, the Panel does not think these circumstances are much different from those Subsection 41(2)(b) is intended to cover.

The Panel was also asked to consider a legislative change to Subsection 39(5), which describes the annual deductions. Since this section was enacted, federal legislation has changed. The Acts now refer to outdated federal legislation.

Recommendations: 3.6.6 Net Annual Remuneration

1. It is suggested the WCB Board of Directors, through the Association of Workers' Compensation Boards of Canada, review the issue of contributions to the Canada Pension Plan by injured workers.

2. The legislation should be changed to include Employment Insurance payments received by an injured worker in the previous 12 months in the calculation of net annual remuneration.
3. The legislation should be changed to ensure Subsection 39(5) is consistent with current federal legislation.

3.6.7 Interest Payments

The Panel was told of isolated incidents when financial compensation payments were delayed through no fault of the injured worker. The reasons for the delay varied (e.g., all documentation not received by WCB, holidays by WCB administrators). These delays created hardships for injured workers. Some had to borrow money to tide them over. Others sold assets.

Obviously, the best solution is no delay in payment. However, when delays occur through no fault of the injured worker, there should be some recognition of the financial hardship created.

Recommendation: 3.6.7 Interest Payments

1. The legislation should be changed to enable the payment of interest to injured workers when financial compensation payments are delayed through no fault of the injured worker. A policy for paying interest should be set by the WCB Board of Directors.

3.6.8 Commutations

The *Acts* provide for the payment of a lump sum, or commutation of a permanent pension, when an injured worker has been assessed with a permanent partial or total disability. In other words, there is an ongoing physical impairment or disability as a result of a work-related injury.

The Panel has recommended changing the basis for the compensation system in Section 3.6.2, System of Financial Compensation. The Panel recommends that there continue to be some financial compensation to recognize the effects of a permanent impairment or disability.

In those jurisdictions that also provide financial compensation for permanent disability or impairment, this financial compensation is generally commuted.

Recommendation: 3.6.8 Commutations

1. The legislation should be changed to commute or pay a lump sum for financial compensation for permanent partial or total impairment or disability compensation on the request of an injured worker. See also Recommendation #2, 3.6.2, System of Financial Compensation.

3.6.9 Guardianship

The Panel was asked to consider the interpretation of the legislation related to the payment of allowances to guardians, who are the natural parents of dependant children. The Panel was told that the current interpretation prohibited such payments.

The Panel has since been advised that the WCB Board of Directors has amended their policy to permit the payment of guardianship allowances to the natural parents of dependent children. As a consequence, this is no longer an issue.

3.6.10 Medical Compensation

The Panel heard from a number of stakeholders about the process for choosing the supplier of medical compensation, particularly as it relates to treatment facilities. The *Acts* generally state that it is the WCB that makes the determination about which treatment facilities will be used. From an operational standpoint, the WCB may have entered into contracts for treatment or may have a list of specialists in a particular field.

The Panel considered whether the injured worker should be the one who makes decisions about their treatment. However, the Panel concluded that the WCB should make the final decision about treatment facilities used by injured workers. The Panel expects that these decisions will be made in a manner that reflects the purpose of the *Acts* and the Values of the WCB.

The Panel was concerned to hear that some decisions about treatment are made in the absence of any consultation with an injured worker. This is not acceptable. The injured worker must know why a particular facility is chosen. The injured worker may have viable alternatives the WCB might accept.

Recommendation: 3.6.10 Medical Compensation

1. The legislation should be changed to require the WCB to consult with the injured worker before the selection of specialists or specialized treatment facilities that will be providing medical compensation.

3.6.11 Vocational Rehabilitation

Many stakeholders told the Panel about the importance of vocational rehabilitation to injured workers who can no longer perform the work they did before a work-related injury or disease.

The majority of respondents to the Stakeholder Questionnaire thought the legislation should be specific about the intent of vocational rehabilitation. The majority of respondents did not see extending vocational rehabilitation benefits to the dependants of injured or deceased workers.

Generally, other jurisdictions provide an enabling reference for vocational rehabilitation in their legislation. The details of the program are found in policy.

As stated in Section 3.1.1, *The Purpose of the Acts*, the Panel sees vocational rehabilitation as a core belief in the NWT/Nunavut system of workers' compensation. It is key to returning injured workers back to the work force.

The Panel agrees with the approach taken in other jurisdictions, that is to enable vocation rehabilitation programs in legislation and leave it to the WCB Board of Directors to spell out the details in policy.

Having said that, the Panel urges the WCB Board of Directors to look at innovative programs that involve the injured workers and employers. The WCB must avoid situations similar to one described to the Panel. An assessment was made of an injured worker's vocational abilities and capabilities. A conclusion was reached about a new career path. After the injured worker was told about the assessment, they were also told that the WCB's vocational rehabilitation programs could not support the worker in pursuing this new career.

The Panel urges the WCB Board of Directors to look at programs that may require top-up payments in the short term but will result in returning an injured worker to the workplace, and in the long run, make them self-sufficient again.

Recommendation: 3.6.11 Vocational Rehabilitation

1. The legislation should be changed to require the WCB Board of Directors to provide vocational rehabilitation programs to injured workers to assist them in returning to the workplace.

3.6.12 Harvesters

The *Acts* contain a program of compensation for harvesters. This program is administered by the WCB. The territorial governments pay for the program and its administration.

The Panel heard from some stakeholders that the YMIR for harvesters has not changed in several years and is considered too low. The Panel also heard that some stakeholders thought coverage for harvesters should be extended to include preparations for harvesting activities and post-harvesting activities.

The respondents to the Stakeholder Questionnaire were split on whether the WCB should continue to administer this program. A significant number thought the government department responsible for harvesters should administer the program. The majority of respondents thought the YMIR for harvesters is too low.

Whether the program is administered by the WCB or not, the Panel believes that the recommendations made for the general workers' compensation system should apply to the harvesters' program as long as it remains a compensation program.

Recommendation: 3.6.12 Harvesters

1. The legislation should be changed to enable the Ministers responsible for the WCB and/or the Ministers responsible for harvesters to prescribe the harvesters' YMIR in regulation.

3.7 Assessments

Assessments are monies paid by employers to the WCB. The amount paid by an employer depends on their type of work or industry (i.e. industrial classification) and the assessment rate for that industrial classification. Assessment rates are set on the basis of the "hazard" posed by the industry (or the employer). Different types of industries may be divided into classes or sub-classes. For example, "services" is an industrial class and "accommodation, food and entertainment" is a subclass within services.

The amount paid by an employer also depends on the amount of their assessable payroll. That is, the total wages, overtime, allowances, etc. the employer pays to their workers up to the legislated maximum (YMIR currently set at \$63,350).

3.7.1 Assessable Payroll

Some stakeholders suggested the definition of assessable payroll should be changed to exclude certain employee benefits such as vacation travel assistance. The Panel does not agree with the suggestion. Workers should be compensated on the value of total remuneration received up to the legislated maximum set for YMIR.

The Panel should also state that whatever amount is considered assessable payroll for the purposes of paying assessments should be the same amount used when calculating the financial compensation entitlements of an injured worker.

3.7.2 Assessments for Extra-territorial Workers

The Panel was asked to consider payment of assessments to the WCB for workers who normally work in other jurisdictions but are working in the NWT or Nunavut for a short time.

Stakeholders provided examples in the trucking and other industries of a NWT/Nunavut employer being required to pay assessments to the NWT/Nunavut WCB and also to the WCB in another jurisdiction for employees who were temporarily doing work in that other jurisdiction. We also heard about employers based outside the NWT/Nunavut whose workers were working temporarily in the NWT/Nunavut. Again, the employer was paying assessments to both their home jurisdiction and the NWT/Nunavut. In essence, employers are paying duplicate assessments.

This is a complicated issue that cannot be addressed by legislative changes in one jurisdiction.

The *Acts* require any employer, whether based in the NWT/Nunavut or not, to notify the WCB and pay assessments when they have workers working in the NWT/Nunavut. This applies whether the work takes an hour or is ongoing.

Some workers' compensation legislation, including the NWT/Nunavut legislation (Section 15), provides coverage for workers based in the NWT/Nunavut who may be working temporarily outside the territories. It is important to understand that this coverage is not extended by all jurisdictions. It is also important to note that the legislation in the jurisdiction a worker is working in takes precedence over the legislation in the worker's home jurisdiction.

In addition, some workers' compensation legislation exempts employers not based in their jurisdiction from notifying and/or paying assessments for workers who are temporarily working in that jurisdiction. For example, British Columbia exempts the payment of assessments for workers based outside British Columbia who are performing work there for 9 consecutive days. Whether such workers are covered by their home jurisdiction depends on the legislation of that jurisdiction.

In the case of the trucking industry, there is an interjurisdictional agreement among the WCBs in Canada (except Saskatchewan) to avoid the payment of duplicate assessments and ensure the continuous coverage of workers who temporarily work in more than one jurisdiction.

Those NWT/Nunavut-based employers who are required to pay assessments in other jurisdictions as well as in the NWT/Nunavut may deduct the amount paid to other jurisdictions from their annual accounting to the WCB.

The Panel agreed that it is an administrative nightmare for employers outside the NWT/Nunavut whose workers are temporarily working in this jurisdiction. They may be able to recover duplicate payments from their home jurisdiction, but this is after the fact and requires a sophisticated tracking system.

The Panel agrees that a provision similar to that found in British Columbia's legislation makes sense. However, the Panel cautions that while this eliminates an extra-territorial employer's obligation to pay assessments to the NWT/Nunavut WCB, it does not ensure that employer's workers are covered by the home jurisdiction. This can only be assured by checking with the WCB in their home jurisdiction.

The Panel did not examine the enabling provisions in all jurisdictions to get a sense of what is a reasonable period of time to waive assessment payments for extra-territorial workers. It seems reasonable to consider both fixed and cumulative time periods. For example, up to 2 weeks of consecutive work with no more than 30 days in total for a year.

Recommendations: 3.7.2 Assessments for Extra-territorial Workers

1. The legislation should be changed to waive notification and payment of assessments for extra-territorial workers who are working in the NWT or Nunavut for a short period of time as a continuation of their regular work.
2. It is suggested that the experience of other jurisdictions be used to fix a consecutive and cumulative time limit.
3. It is suggested that the NWT/Nunavut WCB raise this issue with the Association of Workers' Compensation Boards of Canada to work toward a Canada-wide solution similar to that reached under the interjurisdictional trucking agreement.

3.7.3 *Rewarding Safe Employers*

It was suggested to the Panel that the WCB should establish programs to reward safe employers and also to penalize unsafe employers. The *Acts* enable the WCB Board of Directors to establish such programs if they choose to do so. Therefore this is an operational issue.

Respondents to the Stakeholder Questionnaire supported the concept of rewards and penalties for employers based on their safety performance. The Panel also agrees this concept is a good idea and urges the WCB Board of Directors to consider the submissions of stakeholders in this regard.

Recommendation: 3.7.3 Rewarding Safe Employers

1. It is suggested the WCB Board of Directors consider an experience rating program to reward or penalize individual employers on the basis of their workplace safety performance.

3.7.4 Appeal of Assessments

The *Acts* enable an employer to request a review, and if not satisfied, an appeal, of the amount of an assessment. The WCB Board of Directors establishes the industrial classes and subclasses by policy and annually approves the assessment rate for industrial classes or subclasses. The rate paid by an individual employer is that set for their industrial class or subclass.

The Panel was asked to consider the effect of Section 64, which enables a review or appeal of the amount of an assessment and Subsection 7.7(1), which requires the application of WCB Board of Director policy by the Appeals Tribunal when considering an appeal. It appears that the enabling aspect of Section 64 is contradicted by the requirement to apply WCB Board of Directors' policy.

The legislation in 6 other jurisdictions enables employers to make some form of appeal about the amount of an assessment or their industrial classification.

The amount of an assessment is determined by a number of factors: the amount of assessable payroll, the classification of the employer, the rate set by the WCB Board of

Directors for that classification and, in those jurisdictions with experience rating programs related to employers' safety records, the application of program criteria.

The Panel is recommending that the Accident Fund always be fully funded (Section 3.9.1, Fully Funded Accident Fund). The Panel believes that the WCB Board of Directors must be able to set assessment rates to achieve that requirement.

Recommendation: 3.7.4 Appeal of Assessments

1. The legislation should be changed to confirm that an employer may appeal the amount of their assessment, including the calculation of assessable payroll, their classification, and the application of any criteria related to an experience rating program.

3.8 Industrial Classifications

The WCB Board of Directors has the authority to establish industrial classes and subclasses. These classes and subclasses describe a type of work or industry.

3.8.1 Process for Establishing Industrial Classifications

Some stakeholders asked the Panel to consider the process for establishing industrial classes and subclasses. They suggested the WCB Board of Directors should consult with employers in the industry before establishing or changing classes or subclasses. Stakeholders did not suggest the WCB Board of Directors had to take the advice of employers.

The vast majority of respondents to the Stakeholder Questionnaire agreed, and a significant majority thought the legislation should be changed to require such consultations.

The Panel agrees. We see prior consultation with employers as supporting transparency and accountability. We also see an inclusive approach as a positive way to promote a non-adversarial system.

Recommendation: 3.8.1 Process for Establishing Industrial Classifications

1. The legislation should be changed to require consultation with affected employers, or their representative associations, before introducing or amending an industrial class or subclass.

3.8.2 Classifying an Employer in More than One Class or Subclass

Some stakeholders asked the Panel to consider recommending split classifications for individual employers. In other words, classify the employer's operations based on the proportional hazards or risks of work rather than placing the employer in a single class or subclass.

The Panel agrees. An employer's share of collective liability should be based on the hazard or risk posed.

Recommendation: 3.8.2 Classifying an Employer in More than One Class or Subclass

1. The legislation should be changed to enable the WCB Board of Directors to classify an employer in more than one industrial class or subclass.

3.9 Accident Fund

The Accident Fund is defined as the fund established for payment of compensation and other outlays and expenses authorized by the *Acts*. Employer assessments are paid into the Accident Fund. The WCB Board of Directors makes investments (as defined in the *Acts*) from the Accident Fund.

3.9.1 Fully Funded Accident Fund

The term "fully-funded" is used to describe the situation when the present value of the WCB's assets (e.g., money in the bank and investments) equal an actuarial evaluation of its liabilities (e.g., current and future compensation payments).

Stakeholders asked the Panel to consider recommending that the Accident Fund must always be in a fully funded position.

Respondents to the Stakeholder Questionnaire agreed that the WCB Board of Directors should be required to maintain the Accident Fund in a fully funded position.

The Panel agrees. There should be no question that funds are available now and in the future to fulfill compensation obligations. One of Meredith's principles is "security of payment." Ensuring that the Accident Fund is fully funded is in keeping with security of payment.

Recommendation: 3.9.1 Fully Funded Accident Fund

1. The legislation should be changed to require the Accident Fund to be fully funded.

3.9.2 Accident Fund Surplus

The term "surplus" is used to describe the situation when the present value of the WCB's assets exceeds its liabilities. The difference is the amount of the surplus.

A stakeholder suggested to the Panel that the WCB should never have a surplus.

The WCB Board of Directors is responsible for the expenditures of the WCB. There are a number of ways they are held accountable for their stewardship of the Accident Fund, including the use of any surplus. The Panel sees the use of any surplus as an operational issue.

3.9.3 Authority to Make Investments

The WCB Board of Directors has the exclusive authority (Subsection 60(1)) to make investments. Subsection 60(2) limits that authority to specific types of investments.

Some stakeholders were concerned that the WCB Board of Directors may be directed to make investments by Government.

The Panel believes that the *Acts* preserve the WCB Board of Directors' independence to make investment decisions without any undue influence or direction.

3.10 Access to Information

One of the general themes arising from the public consultation process was transparency. The Panel views easy access to information held by the WCB as an important way to promote transparent administration of the *Acts*. It should be clear that the Panel's support for transparency does not extend to unauthorized access to or disclosure of stakeholder files or records.

3.10.1 Access to WCB Documents

Many stakeholders told us about problems they had in gaining access to information held by the WCB. Some were interested in seeing the procedures used by WCB administration to implement the *Acts* or the policies of the WCB Board of Directors and the minutes of Board meetings.

The WCB has provided electronic access to the *Acts* and policies of the WCB Board of Directors, as well as other information, on the WCB website. Stakeholders reminded the Panel that not all stakeholders have computers to access the website.

Respondents to the Stakeholder Questionnaire agreed there should be access to the minutes of the Board meetings. Respondents did think that access to certain confidential or privileged matters, such as information about WCB personnel and legal advice, should be withheld.

Stakeholders said they knew there was access to information legislation that applied to the WCB. They still thought the *Acts* should be changed to make it easier to access information. The Panel agrees.

Stakeholders also told the Panel about difficulties they encountered in gaining access to the information held by the WCB about them. Whether this is an operational or legislative issue is not clear. The Panel does not see any reason why a worker or employer, or their authorized representative, should not have access to all the information the WCB holds about them.

Recommendations: 3.10.1 Access to WCB Documents

1. The legislation should be changed to enable access to WCB documents, with the exception of worker and employer files, information now protected in the *Acts*, information concerning personnel, and other confidential or privileged information like legal advice.
2. The legislation should be reviewed to confirm there are no impediments to access by a worker or employer, or their authorized representative, to information about them or any dealings they are engaged in with the WCB.

3.10.2 Access to Review Committee and Appeals Tribunal Reports

A number of stakeholders told the Panel that they wished to have access to reports of Review Committees or the Appeals Tribunal. They indicated that it would help other stakeholders preparing for reviews or appeals to know what had been decided in similar cases.

Respondents to the Stakeholder Questionnaire generally agreed with this position.

The Panel struggled with this issue, given our stand on transparency. We concluded that the appellant's right to privacy outweighed the interests of others stakeholders. Reports of Review Committees and Appeals Tribunals are available to appellants. It is up to the appellant to make it public or not.

3.11 Financial Penalties

The *Acts* contains penalties for non-compliance ranging from time in jail to fines. The Panel dealt only with financial penalties and fines. The amounts of these penalties have not changed in many years.

3.11.1 Authority to Set Financial Penalties

The Panel was asked to consider whether the Legislative Assemblies should continue to establish financial penalties or whether that authority should be moved elsewhere. It was pointed out that the level of financial penalties has not changed in many years. The amounts of penalties have not kept pace with those of other jurisdictions.

The practice in other jurisdictions varies. In some cases, financial penalties are set in legislation. In others, the WCB Board of Directors, Minister, or Cabinet prescribe the amount of financial penalties in regulation.

The Panel feels that the instrument establishing financial penalties should be public. Regulations must be made public when they are prescribed. The Panel also believes the WCB Board of Directors is in the best position to keep up with trends in other jurisdictions and relate them to the NWT/Nunavut workers' compensation environment.

Recommendations: 3.11.1 Authority to Set Financial Penalties

1. The legislation should be changed to remove the specific amounts of financial penalties.
2. The legislation should be changed to enable the Minister, on the advice of the WCB Board of Directors, to set the level of financial penalties by regulation.
3. It is suggested the WCB Board of Directors review the current level of financial penalties with a view to bringing the amounts of financial penalties up-to-date and advise the Minister of the results of their review.

3.11.2 Application of Penalties

Some stakeholders told us that they experienced hardship when those required to perform an action under the *Acts* failed to do so. An example given to the Panel was a health centre failing to report to the WCB.

The *Acts* are clear that all who fail to comply are subject to penalty. Therefore, the Panel does not see this as a legislative issue. We agree that those named in the *Acts* must live up to their responsibilities. If they do not, the *Acts* provide for consequences.

3.12 Employer Responsibilities

3.12.1 Duty to Accommodate

An employer's duty to accommodate a recovered worker is one that has been introduced into the legislation of 5 other jurisdictions. Essentially, an employer has a legislated duty to re-employ a recovered worker. Whether the worker is re-employed in their previous job or in another job is dependent on the recovered worker's capability to perform the work.

The duty to accommodate is not an open one. The length of recovery time after a work-related accident, the size of the employer, the length of time a worker had been with the employer, are all examples of limiting circumstances. The legislation does not oblige an employer to create a job if the recovered worker is not able and capable of performing an existing job.

The duty to accommodate is also found in the collective agreements between some workers and employers.

The Panel heard from stakeholders who promoted a duty to accommodate in almost all circumstances and stakeholders who did not support the duty to accommodate at all.

Respondents to the Stakeholder Questionnaire were almost evenly split in their views, with a slight majority in favour of the principle that an employer should accommodate a recovered worker.

In keeping with the Panel's view that one of the purposes of the workers' compensation system is to see a recovered worker return to work, we support the principle of an employer's duty to accommodate. The Panel also believes there should be limitations placed on an employer's duty to accommodate:

These limitations include:

1. An employer should not be forced to create a job. The duty to accommodate a recovered worker should not impose an economic hardship on the employer.
2. The job itself should be meaningful work. It may not be the same work the recovered worker performed before the work-related accident, but it must be a "real" job.
3. The size of the employer's regular workforce is a factor to consider. Many NWT/Nunavut employers operate seasonal businesses where the size of their workforce changes dramatically. Many other employers operate small businesses where a duty to accommodate would be a hardship.

4. The WCB has a role to play in returning a recovered worker to the workplace. Where a worker is not capable or able to perform work that pays the same as their pre-injury wages, the WCB should "top-up" their wages to the pre-injury amount, not to exceed the YMIR.
5. As well as a financial role, the WCB has a facilitating role to play to assist the employer to fulfill their duty to accommodate. This could include funds for specialized equipment or working with the employer and recovered worker to enable a return to work.
6. There are time limits that should be considered. These include the time limit on the employer's duty to accommodate. For example, if it takes an injured worker several years to recover, is it reasonable that the employer has a continuing duty to accommodate the worker? Is it reasonable that an employer should have to accommodate a worker who has been employed for only a few weeks? Is it reasonable for an employer to fulfill the duty to accommodate an injured worker and then fire them shortly after without just cause?

The Panel feels these limiting factors on an employer's duty to accommodate require careful and informed consideration.

Recommendations: 3.12.1 Duty to Accommodate

1. The legislation should be changed to incorporate the principle of an employer's duty to accommodate a recovered worker.
2. The legislative changes should include limitations on the duty to accommodate as described in Section 3.12.1, Duty to Accommodate.

3.12.2 Liability of Corporate Directors

The Panel was asked to consider an apparent deficiency in the *Acts* related to the personal liability of corporate directors for monies owed to the WCB. There are legislated obligations for corporate directors to personally pay monies owing for worker-related

payments such as income tax or payroll when the corporation is unable to make such payments.

The concern is that if a company is abandoned by its directors, and a new company established to essentially continue operations under a new name, there is no way for the WCB to recover the debt from the corporate directors.

Other jurisdictions provide for the personal liability of directors, should a company be abandoned and unable to make good on the debt.

Recommendation: 3.12.2 Liability of Corporate Directors

1. The legislation should be changed to impose personal liability for debts owing to the WCB on those corporate directors of a debtor company who resume operations under another name.

3.12.3 Initial Costs of Transporting an Injured Worker

The Panel was asked to consider the burden placed on an employer under Subsection 54(9) of transporting an injured worker to a physician or a hospital. For those employers in communities or work sites without a hospital or resident physician, this effectively means paying for a medevac that could cost thousands of dollars. This section also enables the WCB to designate other appropriate places for the initial care of the injured worker.

It is understood that the WCB has changed its interpretation of this section to include community health centres staffed by nurses and nurse practitioners. The Panel believes this change in administration addresses the issue that was raised by stakeholders. It does, however, raise another issue related to the currency of terminology used in the *Acts* that the Panel discusses in Section 3.13.1, Health Care Definitions.

3.12.4 Employer Records

Stakeholders asked the Panel to review Subsections 67(5) to (13) of the *Acts*. These provisions authorize the WCB to examine an employer's records and require an employer to produce all documents necessary to ascertain the amount of the employer's payroll. The WCB is required to give written notice of its intent to review documents and require an employer to produce them.

The Panel reviewed a notice from the WCB in this regard. The notice called for trial balances and income statements, T4s and T4 summaries, a statement of all accounts payable, and access to vendor invoices.

It is interesting to note that Revenue Canada cannot require the production of taxpayer documents if it appears that the intent of the request is a "fishing expedition."

The Panel accepts that the WCB requires authority to confirm the amount of an employer's payroll in order to verify assessments. The Panel does not accept that the WCB should be able to make onerous requests of employers that place an unreasonable burden on them. Subsection 67(6) states that the notice of the requirement to produce documents is limited to those documents concerning the subject matter of the examination or inquiry by the WCB. This has not had the effect of limiting WCB requests for documentation to matters concerning payroll or the verification of assessments.

Recommendation: 3.12.4 Employer Records

1. The legislation should be changed to limit the production of employer records to those related to payroll.

3.13 Environmental Change

The *Acts* have not been revised to recognize changes in the workers' compensation environment, particularly those related to health care.

3.13.1 Health Care Definitions

The NWT/Nunavut health care system is composed of many health care providers, such as physicians, nurse practitioners, nurses, specialized therapists, etc. practising in hospitals and community health centres. The *Acts* define "physician" in a manner that includes a person skilled and licensed by law in the art of healing. There are many other licensed health care providers who may be involved in the treatment and care of injured workers, including those who are recognized in the practice of traditional medicine.

The *Acts* refer specifically to hospitals but do not define or refer to any other institutions such as community health centres.

Other jurisdictions define health care professionals more broadly. The Panel found Saskatchewan's definition most helpful. It is not limiting in that it includes any person who is registered or licensed to practice the healing arts. In the NWT/Nunavut, most health care professionals must be licensed by or registered with a territorial or national professional body. This definition would not include those practising traditional medicine.

The Panel reviewed the *Acts* and found that many Sections require a physician to do something that may be done by another health care professional or require admittance to hospital rather than a community health centre (i.e., Sections 17, 24, and 54).

The Panel also noted some provisions that, on further investigation, have been removed from the Alberta legislation on which the territorial *Acts* were based (i.e., Section 19).

The Panel also reviewed Subsection 22(1) that requires the evaluation of a permanent disability to be made on behalf of the WCB by a physician and a non-medical person. The Panel feels this operational direction is outdated and limiting. It should be removed.

Recommendations: 3.13.1 Health Care Definitions

1. The legislation should be changed to include a definition of "health care provider" and remove the definition of "physician." The definition in Saskatchewan's legislation is recommended for consideration.
2. The legislation should be changed to include a definition of "traditional medicine" and "traditional healers." Practitioners of traditional medicine should be included in the definition of "health care provider."
3. The legislation should be changed to incorporate the term "health care provider" as appropriate, specifically in Sections 17, 24 and 54.
4. The legislation should be changed to recognize the reality of health care delivery systems in the NWT/Nunavut and include reference to community health centres as appropriate and specifically in Subsection 54(9).
5. The legislation should be changed to remove Section 19 and Subsection 22(1).

3.13.2 Reporting of Municipal Construction Permits

The Panel was asked to consider the provisions of Subsections 66(3), (4) and (5) that require municipalities to report in writing to the WCB when a building permit with expenditures over \$1,000.00 is issued. It is understood that this section is a "check" to ensure that all employers register with and pay assessments to the WCB.

The 4 jurisdictions that require reporting of construction projects generally do so for safety reasons. For example, to enable pre-construction meetings on health and safety issues. In most cases, the onus is on the employer, not a municipality, to make a report.

The Panel did not feel that municipalities should be legislatively obliged to participate in the administrative processes needed to check up on employers. The issuance of

construction permits is a matter of public record, and the WCB can access that record if it wishes. The Panel did feel that getting a “heads up” on the commencement of large construction or other projects to address safety concerns is a good idea.

Recommendation: 3.13.2 Reporting of Municipal Construction Permits

1. The legislation should be changed to remove the requirement for municipalities to report the issuance of construction permits to the WCB.
2. It is suggested the WCB consider other means that would provide a check on employer compliance with the *Acts* and give the WCB a “heads up” to promote safe work practices on new projects.

3.14 Framework for Administration

This section deals with issues that provide direction, guidance, or authority to the WCB in its administration of the *Acts*.

3.14.1 Basis for Decision-making

Subsection 7(5) of the *Act* provides in part that decisions of the WCB shall be made on the merits of the case. The WCB is not bound by precedence. Some stakeholders have suggested that the WCB should make decisions based on prior decisions in similar cases – in other words, on precedent.

The majority of respondents to the Stakeholder Questionnaire did not agree with this suggestion. They did think that the basis for decision-making should be contained in legislation.

The Panel agrees with respondents. Each worker's case may be different. The WCB should be free to make decisions in the best interest of workers in each case. As stated earlier, principles such as presumption in favour of the injured worker and the application of natural justice always apply however decisions are made.

3.14.2 Client Bill of Rights

Some stakeholders have suggested there needs to be a client bill of rights. They base this suggestion on examples of mistreatment of stakeholders, particularly injured workers.

The majority of respondents to the Stakeholder Questionnaire agreed and thought a client bill of rights should be described in legislation.

The Panel has reviewed the Mission Statement and Values of the WCB. In part, the Mission of the WCB is to provide workers and employers with quality services. This is to be done in accordance with the Values that include treating others with fairness and respect, being open and truthful in dealings with others, and being responsive to clients. These are the same qualities that stakeholders suggest should be in a client bill of rights.

If the WCB is not living up to its stated Mission and Values, it is a deeper operational problem that will not be addressed by legislating the type of treatment a client should receive. The WCB should be held accountable for its commitments. The Panel believes that the accountability mechanisms, particularly the regular reviews of the WCB, provide a way to hold the WCB accountable for its treatment of clients.

3.14.3 Structure of the Acts

The first *Workers' Compensation Act* was enacted in the NWT in 1977. Since that time there have been amendments to various sections of the Act. The *Nunavut Act* essentially mirrors the *NWT Act*. Stakeholders told us that the Act is cumbersome and hard to follow. The challenge of trying to find the final and conclusive definition of a worker was described in Section 3.1.2, Definition of Worker.

Stakeholders also told the Panel that the legislation is hard to understand. It is definitely not in simple or plain language. The Panel sees the upcoming revision to legislation as an opportunity to review the *Acts* in total, with a view to removing redundant or out-of-

date sections, reordering the "parts" and sections within the *Acts* to group the sections dealing with a particular matter in one place.

The Panel believes a major rewriting of the *Acts* will help both administrators and stakeholders.

Recommendation: 3.14.3 Structure of the *Acts*

1. The legislation, in its entirety, should be changed to group like sections, reorder the parts, eliminate redundant or out-of-date provisions, and simplify the language used.

3.14.4 Effect of the *Nunavut Land Claims Agreement Act*

The Panel was asked to consider the effect of the *Nunavut Land Claims Agreement Act* (NLCAA), which was passed by the Federal Government as part of the ratification of the Nunavut Land Claims Agreement (NLCA).

It was suggested that the *Acts* do not reflect the requirements of Articles 5, 23 and 24 of the NLCA. It is beyond the Panel's terms of reference to review compliance with the NLCA. It is clear that the *Acts* must conform with the constitutionally entrenched provisions of the NLCA.

Recommendation: 3.14.4 Effect of the *Nunavut Land Claims Agreement Act*

1. The recommendations contained in this report for legislative change should be reviewed against the requirements of the *Nunavut Land Claims Agreement Act* to ensure compliance and conformity.

4.0 Safety Acts

This section of the report describes the issues related to the *Safety Acts*. Both the NWT and Nunavut Legislative Assemblies have enacted a *Safety Act*. These *Acts* mirror each other with only a few minor differences that do not affect the type of workers' compensation system in the 2 territories. To keep it simple, all references to sections or subsections in the *Acts* are to the *Safety Act* of the Northwest Territories. In this Section of the report, the term "the *Acts*" refers to the *Safety Acts* of the NWT and Nunavut.

For each issue there is a description of the issue followed by the Panel's findings and any recommendations.

4.1 WCB Authority and Accountability

This Section discusses the authority and accountability of the WCB for workplace occupational health and safety legislation.

4.1.1 WCB Responsibility to Administer the Safety Acts

The NWT Legislative Assembly gave the responsibility for administering the *Safety Act* and General Safety Regulations to the WCB in 1996. Previously, a department within the Government of the NWT held that responsibility.

Stakeholders did not raise any concerns about the effect of this transfer of responsibility. The majority of respondents to the Stakeholder Questionnaire thought administration of the *Acts* should remain with the WCB.

4.1.2 Definition of Worker

The Panel was asked to consider the differences in the definition of a worker under workers' compensation and safety legislation. It was suggested that the difference has

resulted in some confusion. The *Acts* define a worker as a person engaged in an occupation. Occupation is not defined.

The Panel has recommended changes to the *Workers' Compensation Act* to simplify the definition of a worker and confirm that an employment relationship should exist. In addition, the Panel has recommended that volunteers engaged in responding to a community emergency, such as fighting a fire, or other emergencies declared by authorized persons be defined as workers.

The Panel believes that the provisions of the *Acts* to govern safe workplaces and practices should apply to any worker.

Recommendation: 4.1.2 Definition of Worker

1. The legislation should be changed to amend the definition of worker to that recommended for the *Workers' Compensation Act* (Recommendations 3.1.2, Definition of Worker).

4.1.3 Definition of Employer

The Panel was asked to consider the differences in the definition of an employer under workers' compensation and safety legislation. It was suggested that the difference has resulted in some confusion. The *Acts* define an employer as every partnership, group of persons, corporation, agent, manager or other authorized person having charge of an establishment in which one or more persons are employed.

In its review of the definition of employer, the Panel found it very hard to determine who is actually responsible for workplace safety. For example, there may be a number of employers at a work site during a construction project. Which one is ultimately responsible, or how is responsibility divided among them?

Further, the *Acts* refer to the owner and principal contractor when assigning certain duties and responsibilities. It is understood that all employers and owners, even when they do not employ workers at a particular work site, have duties and responsibilities under the *Acts*. There is no definition of owner or principal contractor. This is confusing.

The current definition of employer excludes work sites where volunteers are "working." The Panel has recommended that the definition of "worker" should include emergency volunteers and those volunteers whose organizations have applied for coverage of their volunteers under the *Workers' Compensation Acts*. To be consistent, the definition of employer should include such organizations.

Recommendations: 4.1.3 Definition of Employer

1. The legislation should be changed to include owners, principal contractors, and sub-contractors in the definition of "employer" and ensure that their collective and ultimate responsibility for workplace safety is defined.
2. The legislation should be changed to include those non-profit organizations that have applied for coverage of their volunteers as workers under the *Workers' Compensation Acts*.

4.1.4 Process for Changing Codes, Standards, and Other Safety Measures

The Ministers prescribe codes, standards, and other safety measures in the General Safety Regulations to ensure safe work places and practices. There is no requirement to seek the advice of the WCB or stakeholders before changing regulations.

A number of stakeholders told the Panel that before regulations are changed or a new interpretation of existing regulations is implemented, affected stakeholders, or their representative organizations, should be consulted.

The Panel heard from a number of stakeholders who are experts in their field. They expressed the concern that the WCB cannot have on-staff experts in every type of

industry or occupation and so may not have the internal expertise about safe work practices in all areas. These stakeholders advised the Panel of their willingness to assist the WCB when it is contemplating changes to codes, standards or other safety measures in the General Safety Regulations.

The Panel accepted these submissions as a genuine offer to help improve workplace safety and safe work practices. The Panel believes that prior consultation with affected stakeholders before regulations are changed will result in better regulations. It is also in keeping with the Panel's views on transparency in administration.

The WCB was assigned the responsibility for administering the *Acts* by the territorial government. As noted earlier, respondents to the Stakeholder Questionnaire thought this responsibility was well placed. Given the separation between the WCB and the territorial governments, it seems reasonable to assume the governments intended that the WCB should participate not only in the administration and enforcement of the *Acts* but also in the development of any changes.

Recommendations: 4.1.4 Process for Changing Codes, Standards, and Other Safety Measures

1. It is suggested the WCB administration adopt the regular practice of consulting affected stakeholders, or their representative associations, prior to implementing any change in the interpretation of codes, standards, or other safety measures contained in the General Safety Regulations.
2. The legislation should be changed to require the Ministers to prescribe regulations about codes, standards, and other safety measures on the advice of the WCB Board of Directors.
3. The legislation should be changed to require the WCB Board of Directors to consult with affected stakeholders, or their representative associations, prior to advising the Minister about changes to the General Safety Regulations that govern codes, standards, and other safety measures.

4.1.5 Interim Directives

The Panel was asked to consider circumstances when the General Safety Regulations are not up-to-date with the changing safety environment – for example, changes in technology or the introduction of safer work practices.

The Panel was told that it takes time to revise regulations and in the interim there is no requirement for stakeholders to adopt or follow these improved codes, standards, or other safety measures.

A majority of respondents to the Stakeholder Questionnaire thought that the WCB Board of Directors, on the advice of the Chief Safety Officer, should have the authority to establish “codes of practice” in regulation. The Chief Inspector of Mines has authority to issue directives respecting occupational health and safety matters that are applicable to more than 1 mine.

The Panel agrees that the process for establishing codes, standards, and other safety measures should be one that is responsive to changing conditions. Enabling the WCB to issue directives having the force of law would ensure that any deficiencies or omissions in the General Safety Regulations receive immediate attention. Having said this, the Panel is mindful of stakeholders’ concerns about prior consultation before changing the regulatory regime.

Recommendations: 4.1.5 Interim Directives

1. The legislation should be changed to enable the WCB Board of Directors, on the advice of the Chief Safety Officer, to issue directives to change codes, standards and other safety measures.
2. The legislation should be changed to require the WCB Board of Directors to consult with affected stakeholders, or their representative associations, prior to issuing directives that govern codes, standards, and other safety measures.

3. The legislation should be changed to enable the WCB Board of Directors to delegate such responsibility to consult.
4. The legislation should be changed to require the Chief Safety Officer to generally publicize any directives that are issued and to transmit directives to affected employers, who shall post directives.

4.1.6 Regular Reviews of the Safety Acts

The Panel has discussed the importance of regular reviews of the *Workers' Compensation Acts* in Section 3.2.6, Regular Reviews of the *Workers' Compensation Acts*. The Panel is of the same mind when addressing the issue of regular reviews of the *Safety Acts*.

During the course of this review, the Panel has observed that some stakeholders are interested in only safety issues, and others, only in workers' compensation issues. The Panel has also experienced some difficulty in switching focus from safety and workers' compensation issues. The type and source of information the Panel has needed to complete its work is also different in these 2 areas. The Panel believes that reviews focused on either workers' compensation or safety would improve the results. The Panel sees the benefit of combining reviews of industrial safety and mine safety to ensure consistency between the *Acts* and the *Mine Health and Safety Act*, where it makes sense.

The Panel is concerned that if reviews of the *Acts* and the *Workers' Compensation Act* take place at the same time, this would place an unreasonable burden on the WCB administration.

Recommendations: 4.1.6 Regular Reviews of the Safety Acts

1. The legislation should be changed to require independent reviews of safety legislation, WCB Board of Directors' policy governing safety, and WCB administration of the *Acts*.

2. The legislation should be changed to require independent reviews to take place at least once every 5 years. This requirement should not limit the Minister's ability to direct a review more often than every 5 years.
3. It is suggested that reviews of the *Acts* do not take place at the same time as reviews of the *Workers' Compensation Acts*. It is further suggested that reviews of the *Acts* be combined with reviews of the *Mine Health and Safety Acts*.

4.1.7 Authority to Enter into Agreements

The Panel was advised that the *Acts* limit the ability of the WCB Board of Directors and WCB to enter into agreements with parties who are not specified in the *Acts* - for example, to undertake research in co-operation with other governments or co-operate in developing and promoting safety education programs.

As noted earlier under Section 3.2.9, Authority to Enter Into Agreements, the Panel is surprised that the WCB is unable to enter into agreements to administer the *Acts* without specific enabling provisions. It seems to the Panel that if the WCB needs to enter into agreements with other parties to properly administer the *Acts*, then the WCB should be able to do so. The WCB will be held accountable for decisions related to administration, including administration conducted under agreements with other parties.

In keeping with the Panel's views on transparency and accountability, we feel any authority should be given to the WCB Board of Directors. The WCB Board of Directors will then decide what, if any, authority it wishes to delegate to the corporate WCB.

Recommendations: 4.1.7 Authority to Enter into Agreements

1. The legislation should be changed to enable the WCB Board of Directors to enter into agreements with other parties for the purpose of administering the *Acts*.
2. The legislation should be changed to enable the WCB Board of Directors to delegate such authority.

4.1.8 Authority to Initiate Prosecutions

The Panel was asked to consider recommending legislative change that would give the WCB authority to initiate prosecutions under the *Acts*. The Crown Prosecutor's Office now undertakes prosecutions for offences. There appears to be concern that the Crown Prosecutor may not undertake or pursue a prosecution for its own reasons – reasons with which the WCB does not agree.

A small minority of other jurisdictions has limited authority to prosecute alleged offenders.

In Section 3.2.10, Authority to Initiate Prosecutions, the Panel discussed its reasons for not recommending giving authority to the WCB to initiate prosecutions under the *Workers' Compensation Acts*. The Panel believes that the WCB should leave prosecutions under the *Safety Acts* to the Crown Prosecutor and focus on administering the *Acts*.

4.1.9 Peace Officer Status for WCB Official

The Panel was asked to consider recommending legislative change that would confer "peace officer" status to a WCB official. Police officers, the RCMP in the NWT and Nunavut, and for certain purposes, by-law officers are examples of those that hold the responsibilities and authorities of a peace officer.

Legislation in 2 other jurisdictions confers peace officer status on WCB officials.

For the reasons given in Sections 3.2.10 and 11, (Authority to Initiate Prosecutions and Peace Officer Status for WCB Official) and Section 4.1.8, Authority to Initiate Prosecutions, the Panel does not recommend legislative change to confer peace officer status to a WCB official.

4.2 Safe Workplaces

4.2.1 Environmental Tobacco Smoke

Some stakeholders told the Panel about the dangers of environmental tobacco smoke (ETS) in the workplace. The majority of respondents to the Stakeholder Questionnaire thought that there should be legislative change to regulate ETS in the workplace.

The Panel reviewed the practice in other jurisdictions, particularly British Columbia. The Panel also took note of the changing environment in the workplace and the many employers who have banned smoking at their workplace either voluntarily or as a result of municipal by-laws.

The Panel sees the removal of ETS from closed workplaces as a trend in the changing safety environment.

Recommendations: 4.2.1 Environmental Tobacco Smoke

1. The legislation should be changed, if necessary, to enable the Minister to prescribe regulations concerning environmental tobacco smoke in the workplace.
2. It is suggested the regulations in other jurisdictions be reviewed to assist in the development of new regulations.

4.2.2 Harassment Free Workplaces

Some stakeholders told the Panel that a safe workplace is one that is free of workplace harassment. The majority of respondents to the Stakeholder Questionnaire agreed. Some stakeholders told the Panel the *Acts* should be changed to regulate workplace harassment. Others held the view that if workplace harassment is regulated, the appropriate place to do so is human rights or other legislation not in the *Acts*.

No other jurisdictions regulate workplace harassment in safety legislation. Some address workplace harassment in human rights or labour legislation.

The Panel considered whether it was more appropriate to regulate workplace harassment in human rights or labour legislation than in safety legislation. There is no human rights legislation in the NWT or Nunavut. In addition, the 2 territorial governments lack jurisdiction in relation to labour matters.

Recommendation: 4.2.2 Harassment Free Workplaces

1. The legislation should be changed, if necessary, to enable the Minister to prescribe regulations concerning workplace harassment.

4.2.3 First Aid Training

Some stakeholders told the Panel that they saw a correlation between the requirement to have trained first aiders at a work site and an improvement in safe work practices. Other stakeholders advised the Panel that the current requirements related to the level of training for first aiders are out of date. We were told that the first aid sector has responded to changes in technology, such as automatic external defibrillation, by changing the content and levels of first aid certification courses.

Some stakeholders had specific recommendations for the Panel about changing the regulations to update the content of first aid kits and the certification of first aiders at different work sites based on their location, type of industry, and number of on site workers.

The Panel does not have the expertise to assess these specific recommendations. The Panel does think that the recommendations of those in the first aid sector are useful and should be considered by the WCB.

Recommendations: 4.2.3 First Aid Training

1. It is suggested that the Chief Safety Officer review the regulations for first aiders at work sites and the content of first aid kits with a view to recommending change to the Minister through the WCB Board of Directors.
2. It is suggested that the Chief Safety Officer review submissions to the Panel and consult with the first aid community prior to recommending any changes to the Regulations (see also Recommendation 4.1.4, Process for Changing Codes, Standards, and Other Safety Measures).

4.2.4 Commercial Diving

Some stakeholders told the Panel the Codes of Practice related to the commercial diving industry were out of date and suggested the regulations in other jurisdictions provide a template for updating those in the NWT/Nunavut.

The Panel does not have the expertise to assess these specific recommendations. The Panel does think that the recommendations of those in the commercial diving industry are useful and should be considered by the WCB.

Recommendations: 4.2.4 Commercial Diving

1. It is suggested the Chief Safety Officer review the regulations for the commercial diving industry.
2. It is suggested that the Chief Safety Officer consult with the commercial diving industry prior to recommending any changes to the regulations to the Minister through the WCB Board of Directors (see also Recommendation 4.1.4, Process for Changing Codes, Standards, and Other Safety Measures).

4.2.5 Safety Inspections

Some stakeholders commented on the frequency of safety inspections. The Panel heard from some stakeholders that safety inspections were not frequent enough. There were other stakeholders who commented that inspections were too frequent.

Some stakeholders suggested that there should be safety inspectors assigned to large construction projects. They further suggested that if the project was outside the home base of safety inspectors, the WCB should engage local inspectors.

The Panel thought the comments of stakeholders were interesting and helpful. However, they relate to operational issues.

Recommendation: 4.2.5 Safety Inspections

1. It is suggested the WCB Board of Directors consider the comments from stakeholders about project-specific on-site safety inspectors.

4.2.6 Best Safety Practices

Some stakeholders suggested that the WCB should do more to publicize best practices for safety in different industries. Stakeholders told us that it is more useful to them to hear about best practices and how to implement them rather than what is unsafe and should not be done. It was also suggested that the WCB consider safety awards as a way of publicizing the importance of workplace safety and letting stakeholders know about "winning" safety practices.

The Panel thought the comments of stakeholders were interesting and helpful.

Recommendation: 4.2.6 Best Safety Practices

1. It is suggested the WCB Board of Directors consider the comments of stakeholders about publicizing best practices.

4.3 Advice From Stakeholders

4.3.1 Advisory Council

The Panel was asked to consider the establishment of an Advisory Council to advise the Ministers about occupational health and safety.

The majority of respondents to the Stakeholder Questionnaire thought there should be an advisory council created in legislation.

Five jurisdictions have legislated advisory councils. The practice in other jurisdictions varies. Some set up *ad hoc* committees when the Ministers or the WCB needs advice from stakeholders.

The Panel has recommended prior consultation with stakeholders before changes to Codes of Practice are prescribed. The Panel has recommended regular reviews of the *Acts*, of WCB Board of Directors policies, and of operations. The Panel does not see the need to add another body to provide advice and is not recommending the creation of an advisory council.

The Panel believes that if the noted Panel recommendations do not result in sufficient stakeholder input or advice, future review panels should revisit this issue.

4.4 Employer Responsibilities

4.4.1 Joint Work Site Health and Safety Committees

The Panel was asked to consider the establishment of joint work site health and safety committees in the Acts. The Acts do not require the establishment of such committees, although the Chief Safety Officer may direct that one be established at a work site.

Many stakeholders told the Panel that they thought such committees are a good idea. They were divided as to whether joint work site health and safety committees should be required under the Acts or established voluntarily.

The majority of respondents to the Stakeholder Questionnaire thought the requirement to have such committees is a good idea. The majority also thought the number of workers regularly at the work site should limit this requirement.

Seven other jurisdictions require the establishment of joint work site health and safety committees. The number of workers at a work site limits this requirement. Six (6) jurisdictions place a limit of 20 workers and 1 limits the requirement to 10 workers.

The Panel believes there are significant benefits from the establishment of joint work site health and safety committees.

Recommendations: 4.4.1 Joint Work Site Health and Safety Committees

1. The legislation should be changed to require the establishment of joint work site health and safety committees at work sites having 20 or more regular workers.
2. The discretion of the Chief Safety Officer to order the establishment of a joint work site health and safety committee at those work sites with less than 20 regular workers should be retained.

4.4.2 Employee Assistance Programs

Some stakeholders suggested that the *Acts* should require employers to establish employee assistance programs. These programs usually provide confidential counseling and other services to employees experiencing alcohol or drug dependency or other personal problems.

The majority of respondents to the Stakeholder Questionnaire thought that employee assistance programs were a good idea in principle. A significant minority thought such programs should be required in legislation.

Safety *Acts* in other jurisdictions do not require employers to have employee assistance programs.

The Panel believes such programs are a good idea. However, the Panel does not think they should be required in safety legislation and is not recommending a change to the *Acts*.

4.5 Financial Penalties

4.5.1 Authority to Set Financial Penalties

The Panel was asked to consider whether the Legislative Assemblies should continue to establish financial penalties or whether that authority should be moved elsewhere. It was pointed out that the level of financial penalties has not changed in many years. The amounts of penalties have not kept pace with those of other jurisdictions.

The practice in other jurisdictions varies. In some cases, financial penalties are set in legislation. In others, the WCB Board of Directors, Minister, or Cabinet prescribe financial penalties in regulation.

The Panel feels that the instrument establishing financial penalties should be public. Regulations must be made public when they are prescribed. The Panel also believes the WCB Board of Directors is in the best position to keep up with trends in other jurisdictions and relate them to the NWT/Nunavut workers' compensation environment.

Recommendations: 4.5.1 Authority to Set Financial Penalties

1. The legislation should be changed to remove the specific amounts of financial penalties.
2. The legislation should be changed to enable the Minister, on the advice of the WCB Board of Directors, to set the level of financial penalties by regulation.
3. It is suggested that the WCB Board of Directors review the current level of financial penalties with a view to bringing the amounts of financial penalties up-to-date, and advise the Minister of the results of their review.

4.5.2 Application of Fines to Workers

The Panel discussed the levying of financial penalties on workers. The Panel considered the responsibility of employers for maintaining a safe workplace. It also considered the burden financial penalties would place on workers.

However, the Panel concluded there was no compelling reason to recommend change.

4.6 Framework for Administration

4.6.1 Safety Materials

A number of stakeholders told the Panel that they would like to see more generic safety materials coming from the WCB. They referred to the difficulty of carrying around the Acts and General Regulations and spoke positively about a pocket-sized, user-friendly summary that was issued some time ago.

They also told us of the difficulties, including financial difficulties, a small employer has in preparing safety manuals required under the Acts. They thought that the WCB should be issuing generic materials that could be used by employers in preparing such manuals.

We heard that employers want to see positive materials telling them what to do and how to do it rather than publications telling them what not to do. They told us they want publications in plain language that incorporate pictures or graphic descriptions so workers with different literacy levels can easily understand the content.

Some stakeholders told the Panel that curriculum in schools should include safety courses. They reminded the Panel that today's students are tomorrow's workers.

The suggestions of these stakeholders made sense to the Panel.

Recommendation: 4.6.1 Safety Materials

1. It is suggested the WCB Board of Directors consider stakeholder suggestions about safety training and publication of safety materials.
2. It is suggested the Ministers responsible for Education consider stakeholder suggestions regarding safety education in the school system.

4.6.2 Consistency with the Mine Health and Safety Acts

Some stakeholders told us that there are inconsistencies between the Acts and the *Mine Health and Safety Acts*. They are not referring to sections that deal solely with the mining industry but to functions that are the same whether performed on a mine site or construction site.

For these similar functions, it can be confusing to employers working both inside and outside the mining industry.

The Panel accepts the point being made.

Recommendation: 4.6.2 Consistency with the *Mine Health and Safety Acts*

1. When legislative changes are contemplated to the *Safety Acts* or *Mine Health and Safety Acts*, proposed legislation should be consistent in its use of common terms or common functions when possible and appropriate.

4.6.3 Effect of the Nunavut Land Claims Agreement Act

The Panel was asked to consider the effect of the *Nunavut Land Claims Agreement Act* (NLCAA) which was passed by the Federal Government as part of the ratification of the Nunavut Land Claims Agreement (NLCA).

It was suggested that the *Acts* do not reflect the requirements of Articles 5, 23 and 24 of the NLCA. It is beyond the Panel's terms of reference to review compliance with the NLCA. It is clear that the *Acts* must conform with the constitutionally entrenched provisions of the NLCA.

Recommendation: 4.6.3 Effect of the *Nunavut Land Claims Agreement Act*

1. The provisions of the *Acts* and General Safety Regulations and recommendations contained in this report for legislative change should be reviewed against the requirements of the *Nunavut Land Claims Agreement Act* to ensure compliance and conformity.

5.0 A Final Word

During the course of our review, the Panel was asked to establish additional layers of bureaucracy or process to address some of the problems that stakeholders see with the workers' compensation and safety legislation and the administration of that legislation. In general, the Panel has resisted. We resisted because we do not think that more committees or processes will contribute to the Panel's common objectives for legislative change. We have recommended changes to legislation that will:

- Bring new life to the Meredith Principles.
- Provide for transparent use of authority and hold decision-makers and administrators accountable.
- Avoid pitting stakeholders and administrators against each other as adversaries.

The Panel challenges decision-makers and administrators to prove us right in resisting this approach.

The Panel's recommendations for legislative change often flow from each other and work together. In many cases, the recommendations from several issues will need to work in concert in order to achieve the desired objective. In addition, there is a requirement to build upon the changes to the legislative framework with a change in WCB Board of Directors' policy, operational processes, and administrative attitudes.

Early on in this report, the Panel suggested that an operational review be conducted immediately. This operational review would enhance the results of this legislative review and complete the process for WCB renewal.

The Panel first came together in February of 2001. We brought varied backgrounds and experiences to the Panel table. At some point, we have all been workers, some of us

injured workers. Some of us have a background representing the interests of workers; others have experience as employers and working with representative associations of employers. We live in different parts of the NWT and Nunavut.

The one thing we all had in common was a desire to make a difference and improve the workers' compensation and safety systems in the NWT and Nunavut. This commonality of purpose was reinforced during the course of our public consultation phase when we heard from stakeholders.

We asked stakeholders to "Act Now" and provide us with their views about workers' compensation and safety legislation – and they did. Stakeholders appeared at public hearings; they responded to the Stakeholder Questionnaire; and they wrote to the Panel with their views.

The Panel now asks the WCB Board of Directors and the Ministers to "Act Now" in response to the suggestions and recommendations contained in our report.

6.0 Executive Summary and Summary of Recommendations

1.0 Introduction

The Ministers responsible for the Workers' Compensation Board of the Northwest Territories and Nunavut (the Ministers) appointed the WCB Legislative Review Panel (the Panel) in early 2001.

The Panel is composed of a chairperson, representing the public interest, and 6 members, with an equal number representing the interests of workers and employers in the Northwest Territories (NWT) and Nunavut.

The Ministers charged the Panel with:

- Hearing oral presentations and reviewing written submissions from stakeholder groups in the NWT and Nunavut;
- Reporting on the results of the consultation process;
- Expressing its views on the issues presented by stakeholder groups; and
- Making recommendations to the Ministers for changes to the *Acts*.

The Panel carried out an extensive consultation process that involved public hearings in the regional centres and capitals of the 2 territories and a stakeholder questionnaire. The Panel also received written submissions from stakeholders. During the Panel's public consultations, we heard from hundreds of stakeholders.

The Panel had the benefit of research comparing practices in other jurisdictions, recent reviews of workers' compensation systems in other jurisdictions, and research commissioned by the Panel.

The Panel's discussions were always constructive. There was a thorough airing of different points of view. The vast majority of decisions about our recommendations were made by consensus.

While the Panel heard positive comments from stakeholders about the manner in which the Workers' Compensation Board of the NWT and Nunavut (the WCB) was administering the *Acts*, the Panel heard more from those who criticized the WCB. In some cases, the problem was with the legislation. In other cases, the criticism was about operational or administrative practices of the WCB. This criticism was of grave concern to the Panel.

2.0 General Themes

During the course of the Panel's public consultation phase, we heard a number of themes repeated over and over. We have titled our report "ACT NOW" and incorporated many of the recurring comments into the title.

There are 5 general themes that influenced the Panel's conclusions and recommendations.

1. The "Meredith Principles"

The Meredith Principles come from a report on workers' compensation made in 1913. The principles are the basis for workers' compensation systems in Canada and are summarized in part in the Panel's terms of reference:

- Workers relinquish their right to sue employers, at common law, in return for a no fault system of compensation, medical treatment, and rehabilitation.
- Employers accept collective liability and totally fund the compensation system in return for protection from legal action.
- Workers' compensation boards must be independent of the executive branch of government and must be perceived as adjudicating on an independent basis.
- Accountability is a fundamental prerequisite for preventing misuse of delegated power.

The Ministers have directed that the Panel must use this general policy base provided by the Meredith Principles in our assessment of public input and the development of our recommendations.

2. Transparency

The Panel believes that transparency and accountability should be part of the workers' compensation and safety systems. We believe this starts with legislation that is clear about intent, authorities, entitlements, responsibilities, and obligations.

3. Enabling versus Prescriptive Legislation

Some stakeholders told the Panel that workers' compensation legislation should be amended to spell out as much detail as possible so there would be no question about interpretation or administrative discretion. Others told the Panel that legislation should provide a framework for the workers' compensation system, with the Minister and WCB Board of Directors filling in the details through regulation and policy.

The Panel has generally adopted this latter position. However, the Panel believes that the legislative framework must include the standards and means for holding governors and administrators accountable for their actions.

4. Adjudication versus Litigation

Workers' compensation systems are "no fault." That is, the systems are based on results rather than laying blame. Stakeholders told the Panel in many different ways that they perceive the NWT and Nunavut workers' compensation system as an adversarial one.

The Panel does not accept that making the workers' compensation system more adversarial and litigious is an acceptable solution to addressing the very real problems raised by stakeholders.

5. Operational versus Legislative Issues

The Panel is charged with expressing our views on the issues presented by stakeholders. Many of the issues presented by stakeholders are operational or administrative in nature.

The Panel was struck by the numerous presentations about advisors for workers, employers, or both. We were told that stakeholders needed help in dealing with the WCB.

The Panel sees this interest in stakeholder advisors as a symptom of a larger problem. Stakeholders should not need help in dealing with the administrators of the system that is there to serve them.

The Panel does not believe that legislative change alone will address the many operational issues raised by stakeholders. Legislation is a means to an end. It can set the framework for program entitlement or prohibited actions. A change to legislation cannot ensure a change in operational attitude. In this regard, the Panel believes an operational review is urgently required. This review should examine the WCB in light of the many stakeholder concerns, and also the stakeholder compliments, with a view to recommending system-wide change in structure, processes, and attitudes.

3.0 Workers' Compensation Acts

A Summary of Recommendations

Recommendation: 2.5 Operational Versus Legislative Issues

1. It is suggested that an independent review of WCB operations be conducted immediately.

Recommendations: 3.1.1 The Purpose of the Acts

1. The legislation should be amended to include a statement of purpose that describes the intent of the legislation and provides direction on its administration.
2. The statement of purpose should include the following elements:
 - a) The ultimate public policy objective is safe workplaces and safe work practices as governed by the *Safety Acts* and *Mine Health and Safety Acts*.
 - b) Even with the best of intentions, work-related accidents happen, or workers acquire industrial diseases.
 - c) To address the impact on injured workers and their dependants, there exists a no fault system of compensating injured workers and the dependants of deceased workers.
 - d) Compensation is available to:
 - (i) get an injured worker back to work that they are able and capable of performing;
 - (ii) mitigate the effects of a work-related injury or disease on the worker's quality of life through compensation; and
 - (iii) provide for the dependants of deceased workers.
 - e) Compensation includes financial, medical, and vocational rehabilitation compensation.
 - f) The legislation shall be administered with a presumption in favour of the injured worker and by applying the principles of natural justice.
 - g) The Accident Fund, which provides for the compensation system, must be sustained in a manner that recognizes risk and safe work practices.

Recommendations: 3.1.2 Definition of Worker

1. The legislation should be amended to include reference to an employment relationship. Ontario's legislation should be considered in this regard.
2. The legislation should be amended to consolidate the definition of a worker so that all inclusions and exclusions are found in the same section.

3. The legislation should be amended to simplify the definition of a worker and include all persons receiving a regular paycheque from an employer, and if necessary for greater certainty, should specifically include learners.
4. The legislation should continue to provide independent operators with the option of applying for coverage under the *Acts*. The legislation should be amended to require the WCB to accept an application for coverage from an independent operator.
5. The legislation should be amended as required to ensure that employers are not assessed for independent contractors who choose not to apply for coverage under the *Acts*.
6. The legislation should be amended such that all volunteers that are called upon in emergencies (e.g., firefighters, ambulance drivers, mine rescue workers, those providing assistance to civil or police authorities in a declared emergency) are covered under the *Acts*. The legislation should be further amended to confirm that coverage begins when these volunteers leave their home on their way to the emergency. There should not be a change to legislation to levy assessments for this category of volunteers.
7. The legislation should be amended to require the WCB to approve applications from organizations wishing to pay assessments for coverage of their volunteers.

Recommendations: 3.1.3 Definition of Employer

1. Consideration should be given to using the term "sole proprietor" in place of "independent operator" in the *Acts*.
2. The legislation should be amended to include reference to an employment relationship with workers in the definition of employer.
3. Consideration should be given to reducing the list of entities (e.g., firm, association, body) that could be employers in the definition of employer.

Recommendations: 3.2.3 Distinction Between the WCB Board of Directors and Corporate WCB

1. The legislation should be changed to rename the Workers' Compensation Board to reflect responsibilities for workers' compensation and safety. It is suggested that the "Workers' Compensation and Safety Commission" be considered.
2. The legislation should be changed to define the WCB Board of Directors and the corporate entity.
3. The legislation should be changed to generally assign authority to the WCB Board of Directors and to enable the WCB Board of Directors to delegate authority to the corporate entity.

Recommendation: 3.2.4 Annual Reporting

1. The legislation should be changed to enable the Minister to prescribe regulations about the content of annual reports.

Recommendation: 3.2.5 Actuarial Reporting

1. During the next review of the *Acts*, the Review Panel should be charged with reviewing the adequacy of the time frames in Section 61(4) and provided with the specialized resources required to develop recommendations.

Recommendations: 3.2.6 Regular Reviews of the *Workers' Compensation Acts*

1. The legislation should be changed to require the Ministers to direct an independent review of workers' compensation legislation, WCB Board of Directors' policy governing workers' compensation, and WCB administration of the *Acts*.
2. The legislation should be changed to require that independent reviews take place at least once every 5 years. This requirement should not limit the Ministers' ability to direct a review more often than every 5 years.

3. It is suggested that the first review should take place 1 year after legislative changes arising from this report are enacted.

Recommendation: 3.2.7 Fiduciary Responsibility of the WCB Board of Directors

1. The legislation should be changed to add a fiduciary responsibility clause in the *Acts* similar to that now in the *Financial Administration Acts*.

Recommendations: 3.2.8 Liability Protection for the WCB Board of Directors

1. The legislation should be changed to provide specific indemnification for members of the WCB Board of Directors and of the Appeals Tribunal.
2. This indemnification should be limited to the members' performing their duties with the care described in the *Financial Administration Act*, Section 90.

Recommendations: 3.2.9 Authority to Enter into Agreements

1. The legislation should be changed to enable the WCB Board of Directors to enter into agreements with other parties for the purpose of administering the *Acts*.
2. The legislation should be changed to enable the WCB Board of Directors to delegate such authority.
3. It is suggested that agreements with other parties cover the protection of confidential stakeholder information.

Recommendation: 3.2.12 Authority to Own Real Property

1. The legislation should be changed to enable the WCB Board of Directors to buy or sell real property for operational purposes. This recommendation is subject to acceptance of Recommendation 3.9.1 Fully Funded Accident Fund.

Recommendation: 3.3.2 Authority to Appoint the WCB Board of Directors

1. The legislation should be changed to require the Ministers to consult with representatives of workers and employers before making their appointments or recommendations on appointments to the WCB Board of Directors.

Recommendation: 3.3.4 Appointment of Chairperson

1. The legislation should be changed to require the NWT Minister to consult with the Nunavut Minister before appointing the Chairperson of the WCB Board of Directors.

Recommendations: 3.3.5 Vice-Chairperson for the WCB Board of Directors

1. The legislation should be changed to provide for the appointment of a Vice-Chairperson by the WCB Board of Directors from among their number.
2. The legislative change should not describe a role for the Vice-Chairperson other than acting on the Chairperson's behalf during the Chairperson's absence.

Recommendations: 3.3.6 WCB Board Members' Term of Office

1. The legislation should be changed to appoint members of the WCB Board of Directors for a term up to 3 years. The Panel urges the Minister to consider staggered terms to provide continuity and stability on the WCB Board of Directors.
2. The legislation should be changed to enable the reappointment of members of the WCB Board of Directors to a maximum of 6 consecutive years of service. Former members may be reappointed to the WCB Board of Directors after a 1 year break in service.

Recommendations: 3.3.7 Remuneration of the WCB Board of Directors

1. The legislation should be changed to require the Minister to set the remuneration for members of the WCB Board of Directors, including the Chairperson, in regulation.

2. The legislation should be changed to require the Minister to set the remuneration for the Vice-Chairperson when the Vice-Chairperson is acting for the Chairperson in regulation.
3. The legislation should be changed to require the Minister to set the remuneration for members of the Appeals Tribunal, including the Chairperson, in regulation.

Recommendations: 3.4.2 Workers' Advisor

1. The legislation should be changed to require the establishment of a Workers' Advisor, independent of the WCB administration, and appointed by the WCB Board of Directors.
2. The legislation should be changed to include the requirement for the Workers' Advisor to make an annual report to the WCB Board of Directors and stakeholders.
3. It is suggested that the WCB Board of Directors use a transparent process for the engagement of the Workers' Advisor.
4. It is suggested that the ongoing requirement for a Workers' Advisor be considered in the reviews recommended in Section 3.2.6, *Regular Reviews of the Workers' Compensation Acts*.

Recommendations: 3.5.1 Review Committee

1. The legislation should be changed to define the Review Committee as an internal committee of the WCB, appointed by the WCB Board of Directors.
2. The legislation should be changed to include the purpose of the Review Committee that is, upon written submission of a worker, dependant, or employer, to objectively review WCB administration decisions regarding financial, medical, or vocational rehabilitation compensation and assessment.
3. The legislation should be changed to require the Review Committee to hear representations from appellants who wish to make them.
4. The legislation should be changed to apply WCB Board of Directors' policy where applicable.

Recommendations: 3.5.2 Conflicting Medical Opinion

1. The legislation should be changed to enable the Appeals Tribunal to require the medical assessment or examination of an injured worker.
2. The legislation should be changed to require the selection of the health care provider for a medical assessment or examination to be a joint decision of the Review Committee or Appeals Tribunal and the injured worker.

Recommendations: 3.5.3 Independence of the Appeals Tribunal

1. The legislation should be changed to enable the Appeals Tribunal to hire or contract its own staff and professional advisors (e.g., legal and medical).
2. The legislation should be changed to require the Appeals Tribunal to apply WCB Board of Directors' policy *when applicable*.
3. The legislation should be changed to reinforce the application of natural justice and presumption in favour of an injured worker by the Appeals Tribunal.
4. The legislation should be changed to remove Subsection 7.7(4).

Recommendations: 3.5.4 Appointments to the Appeals Tribunal

1. The legislation should be changed to require advice from the Nunavut Minister on all Appeals Tribunal appointments.
2. The legislation should be changed to appoint members of the Appeals Tribunal for a term up to 3 years. The Panel urges the Minister to consider staggered terms to provide continuity and stability on the Appeals Tribunal.
3. The legislation should be changed to enable the reappointment of members of the Appeals Tribunal to a maximum of 6 consecutive years of service. Former members may be reappointed to the Appeals Tribunal after a 1 year break in service.
4. The current provision in the Acts to enable a member of the Appeals Tribunal to complete their duties if an appeal has started but not finished before the expiry of their term should remain.

Recommendations: 3.5.5 Time Limits in the Appeal Processes

1. The legislation should be changed to set the following time limits for the steps in the review and appeal processes:

- a) From the time a request for review is received, the Review Committee has up to 30 days to hold a review hearing.
 - b) The Review Committee shall make a decision and issue its report within 7 days after conclusion of the review hearing.
 - c) From the time the WCB receives the report of the Review Committee, it has up to 30 days to implement the decision.
 - d) From the time a request for appeal is received, the Appeals Tribunal has up to 60 days to hold an appeal hearing.
 - e) The Appeals Tribunal shall make a decision and issue its report within 30 days.
 - f) From the time the WCB receives the report of the Appeals Tribunal, it has up to 30 days to implement the decision.
2. The legislation should be changed to enable an appellant to request a delay by the Review Committee and Appeals Tribunal in holding a hearing. If the appeals body does not agree to the delay, the appellant may withdraw their request for review or appeal without prejudice and resubmit it at a later date. The time limits on the appeals process recommence on the date of resubmission.

Recommendation: 3.5.6 Exclusive Jurisdiction of the Appeals Tribunal

1. The legislation should be changed to limit the exclusive jurisdiction of the Appeals Tribunal should natural justice be denied or should the Appeals Tribunal exceed its jurisdiction.

Recommendations: 3.6.1 Compensable Injuries and Industrial Diseases

1. The legislation should be changed to define injury or work-related injury.

2. The WCB Board of Directors is urged to consider the submissions of stakeholders related to chronic pain, occupational stress, workplace harassment, and alcohol abuse and make a decision on their compensability.

Recommendations: 3.6.2 System of Financial Compensation

1. The legislation should be changed to make wage loss the basis for temporary, ongoing, and permanent financial compensation.
2. The legislation should be changed to include financial payment for permanent partial or total impairment or disability. Consideration should be given to lump sum payments. See also Recommendation 3.6.8, Commutations.

Recommendations: 3.6.3 Year's Maximum Insurable Remuneration (YMIR)

1. The legislation should be changed to enable the Minister to prescribe the amount of YMIR by regulation, on the advice of the WCB Board of Directors.
2. The legislation should be changed to define a year's minimum insurable remuneration and enable the Minister to prescribe this amount by regulation, on the advice of the WCB Board of Directors.
3. It is suggested that the WCB Board of Directors review the current YMIR with a view to ensuring that it fairly reflects the of wages in the NWT/Nunavut.

Recommendations: 3.6.4 Special Purpose Financial Compensation

1. The legislation should be changed to direct the WCB to provide financial compensation for clothing allowances, death, and funeral expenses and quality of life payments to normalize the daily life of injured workers. The details of the types and amounts of compensation should be established by the WCB Board of Directors in policy.
2. It is suggested the review of YMIR (Recommendation #3, 3.6.3, Year's Maximum Insurable Remuneration (YMIR)) should take into account the effect on dependants.

3. The legislation should be changed to direct the WCB to pay compensation to dependants under Section 37.
4. It is suggested the WCB Board of Directors review the types and levels of special purpose compensation with a view to increasing the amounts payable.
5. It is suggested the WCB Board of Directors review the implementation of the special purpose compensation programs with a view to ensuring their accessibility and appropriate delivery.

Recommendations: 3.6.6 Net Annual Remuneration

1. It is suggested the WCB Board of Directors, through the Association of Workers' Compensation Boards of Canada, review the issue of contributions to the Canada Pension Plan by injured workers.
2. The legislation should be changed to include Employment Insurance payments received by an injured worker in the previous 12 months in the calculation of net annual remuneration.
3. The legislation should be changed to ensure Subsection 39(5) is consistent with current federal legislation.

Recommendation: 3.6.7 Interest Payments

1. The legislation should be changed to enable the payment of interest to injured workers when financial compensation payments are delayed through no fault of the injured worker. A policy for paying interest should be set by the WCB Board of Directors.

Recommendation: 3.6.8 Commutations

1. The legislation should be changed to commute or pay a lump sum for financial compensation for permanent partial or total impairment or disability compensation on

the request of an injured worker. See also Recommendation #2, 3.6.2, System of Financial Compensation.

Recommendation: 3.6.10 Medical Compensation

1. The legislation should be changed to require the WCB to consult with the injured worker before the selection of specialists or specialized treatment facilities that will be providing medical compensation.

Recommendation: 3.6.11 Vocational Rehabilitation

1. The legislation should be changed to require the WCB Board of Directors to provide vocational rehabilitation programs to injured workers to assist them in returning to the workplace.

Recommendation: 3.6.12 Harvesters

1. The legislation should be changed to enable the Ministers responsible for the WCB and/or the Ministers responsible for harvesters to prescribe the harvesters' YMIR in regulation.

Recommendations: 3.7.2 Assessments for Extra-territorial Workers

1. The legislation should be changed to waive notification and payment of assessments for extra-territorial workers who are working in the NWT or Nunavut for a short period of time as a continuation of their regular work.
2. It is suggested that the experience of other jurisdictions be used to fix a consecutive and cumulative time limit.
3. It is suggested that the NWT/Nunavut WCB raise this issue with the Association of Workers' Compensation Boards of Canada to work toward a Canada-wide solution similar to that reached under the interjurisdictional trucking agreement.

Recommendation: 3.7.3 Rewarding Safe Employers

1. It is suggested the WCB Board of Directors consider an experience rating program to reward or penalize individual employers on the basis of their workplace safety performance.

Recommendation: 3.7.4 Appeal of Assessments

1. The legislation should be changed to confirm that an employer may appeal the amount of their assessment, including the calculation of assessable payroll, their classification, and the application of any criteria related to an experience rating program.

Recommendation: 3.8.1 Process for Establishing Industrial Classifications

1. The legislation should be changed to require consultation with affected employers, or their representative associations, before introducing or amending an industrial class or subclass.

Recommendation: 3.8.2 Classifying an Employer in More than One Class or Subclass

1. The legislation should be changed to enable the WCB Board of Directors to classify an employer in more than one industrial class or subclass.

Recommendation: 3.9.1 Fully Funded Accident Fund

1. The legislation should be changed to require the Accident Fund to be fully funded.

Recommendations: 3.10.1 Access to WCB Documents

1. The legislation should be changed to enable access to WCB documents, with the exception of worker and employer files, information now protected in the *Acts*,

information concerning personnel, and other confidential or privileged information like legal advice.

2. The legislation should be reviewed to confirm there are no impediments to access by a worker or employer, or their authorized representative, to information about them or any dealings they are engaged in with the WCB.

Recommendations: 3.11.1 Authority to Set Financial Penalties

1. The legislation should be changed to remove the specific amounts of financial penalties.
2. The legislation should be changed to enable the Minister, on the advice of the WCB Board of Directors, to set the level of financial penalties by regulation.
3. It is suggested the WCB Board of Directors review the current level of financial penalties with a view to bringing the amounts of financial penalties up-to-date and advise the Minister of the results of their review.

Recommendations: 3.12.1 Duty to Accommodate

1. The legislation should be changed to incorporate the principle of an employer's duty to accommodate a recovered worker.
2. The legislative changes should include limitations on the duty to accommodate as described in Section 3.12.1, Duty to Accommodate.

Recommendation: 3.12.2 Liability of Corporate Directors

1. The legislation should be changed to impose personal liability for debts owing to the WCB on those corporate directors of a debtor company who resume operations under another name.

Recommendation: 3.12.4 Employer Records

1. The legislation should be changed to limit the production of employer records to those related to payroll.

Recommendations: 3.13.1 Health Care Definitions

1. The legislation should be changed to include a definition of "health care provider" and remove the definition of "physician." The definition in Saskatchewan's legislation is recommended for consideration.
2. The legislation should be changed to include a definition of "traditional medicine" and "traditional healers." Practitioners of traditional medicine should be included in the definition of "health care provider."
3. The legislation should be changed to incorporate the term "health care provider" as appropriate, specifically in Sections 17, 24 and 54.
4. The legislation should be changed to recognize the reality of health care delivery systems in the NWT/Nunavut and include reference to community health centres as appropriate and specifically in Subsection 54(9).
5. The legislation should be changed to remove Section 19 and Subsection 22(1).

Recommendation: 3.13.2 Reporting of Municipal Construction Permits

1. The legislation should be changed to remove the requirement for municipalities to report the issuance of construction permits to the WCB.
2. It is suggested the WCB consider other means that would provide a check on employer compliance with the *Acts* and give the WCB a "heads up" to promote safe work practices on new projects.

Recommendation: 3.14.3 Structure of the Acts

1. The legislation, in its entirety, should be changed to group like sections, reorder the parts, eliminate redundant or out-of-date provisions, and simplify the language used.

Recommendation: 3.14.4 Effect of the *Nunavut Land Claims Agreement Act*

1. The recommendations contained in this report for legislative change should be reviewed against the requirements of the *Nunavut Land Claims Agreement Act* to ensure compliance and conformity.

4.0 Safety Acts

A Summary of Recommendations

Recommendation: 4.1.2 Definition of Worker

1. The legislation should be changed to amend the definition of worker to that recommended for the *Workers' Compensation Act* (Recommendations 3.1.2, Definition of Worker).

Recommendations: 4.1.3 Definition of Employer

1. The legislation should be changed to include owners, principal contractors, and sub-contractors in the definition of "employer" and ensure that their collective and ultimate responsibility for workplace safety is defined.
2. The legislation should be changed to include those non-profit organizations that have applied for coverage of their volunteers as workers under the *Workers' Compensation Acts*.

Recommendations: 4.1.4 Process for Changing Codes, Standards, and Other Safety Measures

1. It is suggested the WCB administration adopt the regular practice of consulting affected stakeholders, or their representative associations, prior to implementing any change in the interpretation of codes, standards, or other safety measures contained in the General Safety Regulations.

2. The legislation should be changed to require the Ministers to prescribe regulations about codes, standards, and other safety measures on the advice of the WCB Board of Directors.
3. The legislation should be changed to require the WCB Board of Directors to consult with affected stakeholders, or their representative associations, prior to advising the Minister about changes to the General Safety Regulations that govern codes, standards, and other safety measures.

Recommendations: 4.1.5 Interim Directives

1. The legislation should be changed to enable the WCB Board of Directors, on the advice of the Chief Safety Officer, to issue directives to change codes, standards, and other safety measures.
2. The legislation should be changed to require the WCB Board of Directors to consult with affected stakeholders, or their representative associations, prior to issuing directives that govern codes, standards, and other safety measures.
3. The legislation should be changed to enable the WCB Board of Directors to delegate such responsibility to consult.
4. The legislation should be changed to require the Chief Safety Officer to generally publicize any directives that are issued and to transmit directives to affected employers who shall post directives.

Recommendations: 4.1.6 Regular Reviews of the *Safety Acts*

1. The legislation should be changed to require independent reviews of safety legislation, WCB Board of Directors' policy governing safety, and WCB administration of the *Acts*.
2. The legislation should be changed to require independent reviews to take place at least once every 5 years. This requirement should not limit the Minister's ability to direct a review more often than every 5 years.

3. It is suggested that reviews of the *Acts* do not take place at the same time as reviews of the *Workers' Compensation Acts*. It is further suggested that reviews of the *Acts* be combined with reviews of the *Mine Health and Safety Acts*.

Recommendations: 4.1.7 Authority to Enter into Agreements

1. The legislation should be changed to enable the WCB Board of Directors to enter into agreements with other parties for the purpose of administering the *Acts*.
2. The legislation should be changed to enable the WCB Board of Directors to delegate such authority.

Recommendations: 4.2.1 Environmental Tobacco Smoke

1. The legislation should be changed, if necessary, to enable the Minister to prescribe regulations concerning environmental tobacco smoke in the workplace.
2. It is suggested the regulations in other jurisdictions be reviewed to assist in the development of new regulations.

Recommendation: 4.2.2 Harassment Free Workplaces

1. The legislation should be changed, if necessary, to enable the Minister to prescribe regulations concerning workplace harassment.

Recommendations: 4.2.3 First Aid Training

1. It is suggested that the Chief Safety Officer review the regulations for first aiders at work sites and the content of first aid kits with a view to recommending change to the Minister through the WCB Board of Directors.
2. It is suggested that the Chief Safety Officer review submissions to the Panel and consult with the first aid community prior to recommending any changes to the

Regulations (see also Recommendation 4.1.4, Process for Changing Codes, Standards, and Other Safety Measures).

Recommendations: 4.2.4 Commercial Diving

1. It is suggested the Chief Safety Officer review the regulations for the commercial diving industry.
2. It is suggested that the Chief Safety Officer consult with the commercial diving industry prior to recommending any changes to the regulations to the Minister through the WCB Board of Directors (see also Recommendation 4.1.4, Process for Changing Codes, Standards, and Other Safety Measures).

Recommendation: 4.2.5 Safety Inspections

1. It is suggested the WCB Board of Directors consider the comments from stakeholders about project-specific on-site safety inspectors.

Recommendation: 4.2.6 Best Safety Practices

1. It is suggested the WCB Board of Directors consider the comments of stakeholders about publicizing best practices.

Recommendations: 4.4.1 Joint Work Site Health and Safety Committees

1. The legislation should be changed to require the establishment of joint work site health and safety committees at work sites having 20 or more regular workers.
2. The discretion of the Chief Safety Officer to order the establishment of a joint work site health and safety committee at those work sites with less than 20 regular workers should be retained.

Recommendations: 4.5.1 Authority to Set Financial Penalties

1. The legislation should be changed to remove the specific amounts of financial penalties.
2. The legislation should be changed to enable the Minister, on the advice of the WCB Board of Directors, to set the level of financial penalties by regulation.
3. It is suggested that the WCB Board of Directors review the current level of financial penalties with a view to bringing the amounts of financial penalties up-to-date, and advise the Minister of the results of their review.

Recommendation: 4.6.1 Safety Materials

1. It is suggested the WCB Board of Directors consider stakeholder suggestions about safety training and publication of safety materials.
2. It is suggested the Ministers responsible for Education consider stakeholder suggestions regarding safety education in the school system.

Recommendation: 4.6.2 Consistency with the *Mine Health and Safety Acts*

1. When legislative changes are contemplated to the *Safety Acts* or *Mine Health and Safety Acts*, proposed legislation should be consistent in its use of common terms or common functions when possible and appropriate.

Recommendation: 4.6.3 Effect of the *Nunavut Land Claims Agreement Act*

1. The provisions of the Acts and General Safety Regulations and recommendations contained in this report for legislative change should be reviewed against the requirements of the *Nunavut Land Claims Agreement Act* to ensure compliance and conformity.

5.0 A Final Word

The Panel has recommended changes to legislation that will:

- Bring new life to the Meredith Principles.
- Provide for transparent use of authority and hold decision-makers and administrators accountable.
- Avoid pitting stakeholders and administrators against each other.

We have resisted establishing additional layers of bureaucracy or process to address some of the problems presented by stakeholders. The Panel challenges decision-makers and administrators to prove us right in resisting this approach.

The Panel's recommendations for legislative change often flow from each other and work together. In many cases, the recommendations will need to work in concert to achieve the desired result.

The Panel suggested an operational review be conducted immediately. We see this operational review as a way to enhance the results of our legislative review and complete the process for WCB renewal.

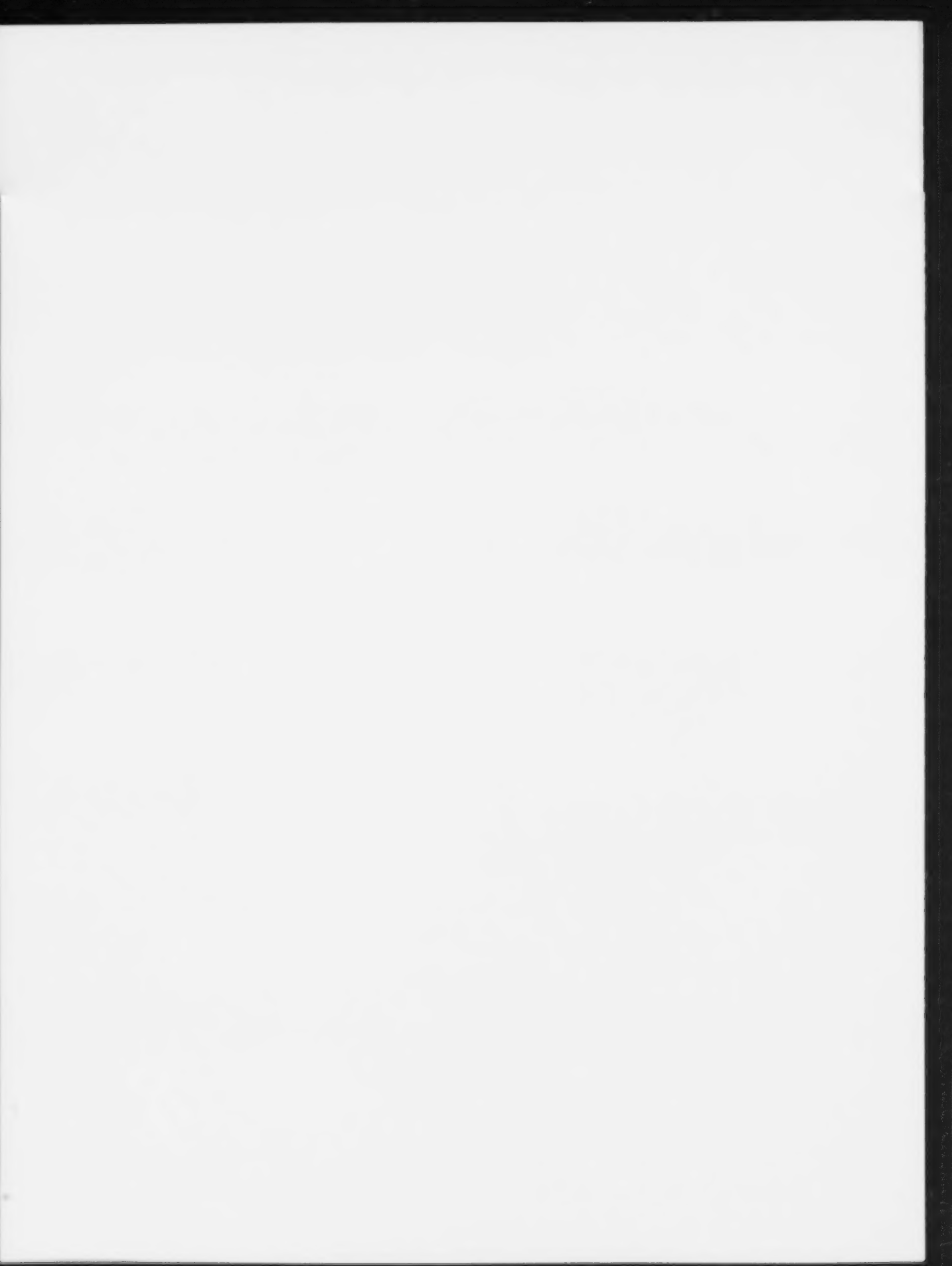
When the Panel first came together, the one thing we all had in common was a desire to make a difference and improve the workers' compensation and safety systems in the NWT and Nunavut. This commonality of purpose was reinforced during the course of our public consultation phase when we heard from stakeholders.

We asked stakeholders to "Act Now" and provide us with their views about workers' compensation and safety legislation – and they did. The Panel now asks the WCB Board of Directors and the Ministers to "Act Now" in response to the suggestions and recommendations contained in our report.

Appendix A

Glossary and Definitions

This Appendix contains definitions for terms and acronyms used throughout the report.



Glossary and Definitions

Accident Fund:	Means the fund established under the <i>Workers' Compensation Acts</i> into which employer assessments are paid and out of which compensation for injured workers and dependants and the administrative costs of the workers' compensation system are paid.
Acts:	In Section 3, the <i>Acts</i> mean the <i>Workers' Compensation Acts</i> of the Northwest Territories and Nunavut. In Section 4, the <i>Acts</i> mean the <i>Safety Acts</i> of the Northwest Territories and Nunavut.
Adjudication:	Means the process for making a decision about a stakeholder claim; in other words, make a judgement.
Appeals Tribunal:	The Appeals Tribunal is the body established under the <i>Acts</i> to make decisions about appeals by workers, their dependants, or employers about a decision by a Review Committee (the first level in the appeals process). There is 1 Appeals Tribunal serving both the Northwest Territories and Nunavut.
Appellant:	An appellant is a worker, a worker's dependant, or an employer who disagrees with a decision by the WCB administration and requests a review of that decision by a Review Committee or the Appeals Tribunal.
Assessments:	Assessments are the monies paid by employers to fund the workers' compensation system. They are based on the amount of assessable payroll, the industrial classification of the employer, and the rate of assessment for that industrial classification.
Commutation:	Means paying the dollar value of a permanent pension in one lump sum instead of paying the pension over time.
Compensation:	Compensation means the financial payments, medical treatment, and vocational rehabilitation to which an injured worker or their dependants are entitled under the <i>Workers' Compensation Acts</i> of the Northwest Territories and Nunavut.
Corporate WCB:	The corporate WCB means the corporation called the Workers' Compensation Board, its management and staff, that was established by the <i>Acts</i> .

Glossary and Definitions

Exclusive jurisdiction:	Means that a decision cannot be reviewed, questioned, or changed by a court of law or anyone else. Exclusive jurisdiction applies only when the WCB or Appeals Tribunal are making decisions within the authority given to them under the <i>Workers' Compensation Acts</i> and applying the principles of natural justice.
Friedman Report:	Means the Final Report of the Review Committee of the Workers' Compensation Board Appeal Systems chaired by Samuel Friedman, QC, commissioned by the Minister responsible for the Workers' Compensation Board of Alberta.
Fully Funded:	Means that the "present value" (a financial calculation) of the WCB's assets, such as money in the bank and investments, equal an actuarial evaluation (a financial calculation) of its liabilities, such as current and future compensation payments owing to injured workers and the cost of administration.
Industrial Classifications:	Industrial classification is a way of grouping similar industries or occupations together. Industrial classifications have 2 levels: a class like construction and subclasses like general construction or mechanical installation and servicing.
Meredith Principles:	Means the principles contained in a report about workers' compensation legislation written by Sir William Meredith and presented to the Lieutenant Governor of Ontario in 1913. These principles are the basis for Canadian workers' compensation systems.
Ministers:	The Ministers mean the Cabinet members in the NWT and Nunavut Governments who have been assigned responsibility for the <i>Workers' Compensation and Safety Acts</i> and General Safety Regulations.
Natural justice:	Essentially means fairness, including the right to know what facts or evidence will be placed before decision-makers; the right to be heard by decision-makers; and the right to impartial decision-makers.
Net annual remuneration:	Means the annual income of an injured worker from their employment, including wages, overtime, bonuses, and some financial benefits, less statutory deductions like income tax,

Glossary and Definitions

Canada Pension Plan contributions, and Employment Insurance premiums.

Panel: The Panel means the WCB Legislative Review Panel appointed by the Ministers to review workers' compensation and safety legislation and present a report to the Ministers.

Stakeholder Questionnaire: The Stakeholder Questionnaire was prepared by the WCB Legislative Review Panel and sent to workers, injured workers, employers and other interested stakeholders to find out what stakeholders think about workers' compensation and safety issues.

Stakeholders: Stakeholders are primarily workers, injured workers and employers. Stakeholders also include the dependants of injured workers and interested members of the public like unions and employer associations.

Surplus/Deficit: Means the difference between the "present value" (a financial calculation) of the WCB's assets, such as money in the bank and investments, and an actuarial evaluation (a financial calculation) of its liabilities, such as current and future compensation payments owing to injured workers and the cost of administration. The amount of a surplus is the amount by which assets exceed liabilities. The amount of a deficit is the amount by which liabilities exceed assets.

WCB

Board of Directors: Means the governing board of the WCB, appointed by the NWT Minister.

Acronyms

AED – Automated External Defibrillator

CAODC – Canadian Association of Oilwell Drilling Contractors

CAPP – Canadian Association of Petroleum Producers

CPP – Canada Pension Plan

EI – Employment Insurance

ETS – Environmental Tobacco Smoke

Glossary and Definitions

FAA – *Financial Administration Act*

NLCA – Nunavut Land Claim Agreement

NLCAA – *Nunavut Land Claim Agreement Act*

NWT – Northwest Territories

RFP – Request for Proposal

WAO – Workers' Advisor Office

WCB – Workers' Compensation Board

YMIR – Year's Maximum Insurable Remuneration

Appendix B

WCB Legislative Review Panel Terms of Reference

This appendix contains the terms of reference issued by the Ministers responsible for the *Workers' Compensation and Safety Acts* to the WCB Legislative Review Panel in January 2001.



WCB LEGISLATIVE REVIEW PANEL

TERMS OF REFERENCE

BACKGROUND

Workers' Compensation Acts

The fundamental principles of the workers' compensation system provide a general policy base. Any recommendations or public opinion should be measured against these principles:

1. The historic trade off:
 - Workers relinquish their right to sue employers, at common law, in return for a no fault system of compensation, medical treatment and rehabilitation.
 - Employers accept collective liability, and totally fund the compensation system in return for protection from legal action.
2. Independence and accountability:
 - WCBs must be independent of the executive branch of government, and must be perceived as adjudicating on an independent basis.
 - Accountability is a fundamental prerequisite for preventing misuse of delegated power.

These fundamental principles are incorporated in the existing *Workers' Compensation Acts*.

Safety Acts

The *Safety Act* in each Territory establishes the safety regulations, which govern specific establishments or types of establishment. The purpose of occupational health and safety legislation is to provide the required standards to ensure that workers and the general public are not exposed to unsafe or hazardous workplaces.

The concept of an occupational health and safety system is incorporated in the two *Safety Acts*. The General Regulations provide specific employers or types of employers with specific occupational health and safety guidelines to govern their activities.

Current Status

In recent years, stakeholder input has suggested updating the provisions of the Acts and General Regulations. Various review panels and Standing Committees of the Legislative Assembly have made reports and recommendations; however, this has not resulted in changes to legislation. In addition, recent legal challenges have indicated the need to revise the *Workers' Compensation Acts* and *Safety Acts*.

As a result of these needs, the Ministers have decided to review the Acts by establishing an independent panel that would consult stakeholders and make recommendations for change.

WCB LEGISLATIVE REVIEW PANEL

TERMS OF REFERENCE

AUTHORITY

The Legislative Review Panel is established under the authority of the Ministers Responsible for the Workers' Compensation Board (WCB) of the Northwest Territories and Nunavut to review the *Workers' Compensation Acts* and *Safety Acts* and General Safety Regulations of the Northwest Territories and Nunavut.

The Review Panel will:

- hear oral presentations and review written submissions from stakeholder groups in the Northwest Territories and Nunavut;
- report on the results of the consultation process and express its views on the issues presented by the stakeholder groups; and
- make recommendations to the Ministers for changes to the Acts.

SCOPE OF REVIEW

The Panel will review:

- The *Workers' Compensation Acts* of the Northwest Territories and Nunavut that govern payment of compensation for workers and their dependants, and provide stewardship of the funds employers contribute for this purpose.
- The *Safety Acts* and General Regulations of the Northwest Territories and Nunavut that encompass safe workplaces and work environments, as well as safe work practices and procedures. The concept of an occupational health and safety system is incorporated in the *Safety Acts*.

The Panel will not review the operations, internal organization or service levels of the WCB.

PROCESS

- The Review Panel will consist of a Chairperson, representing the public interest, four independent members and two members from the WCB's Board of Directors. These six members will include three from Nunavut and three from the Northwest Territories, and three each representing workers and employers.
- The Chairperson of the Review Panel will be the spokesperson for the panel.
- The Review Panel will undertake a public consultation process, to include public hearings in the Northwest Territories and Nunavut, and will solicit input from stakeholders in both territories. Issue papers will be prepared and made available to stakeholders to facilitate this process.
- The Review Panel will commence work in January 2001, and will submit its report and recommendations to the Ministers by December 2001.

Appendix C

Stakeholder Questionnaire and Summary of Responses

This appendix contains the text of the Stakeholder Questionnaire sent to approximately 700 stakeholders (workers, injured workers, employers, representative stakeholder associations) in July 2001. One hundred and seven (107), or 15%, of the questionnaires were returned. The questionnaire was also available to anyone who wanted to complete it.

This appendix also contains a summary of the responses received for each question and a summary of additional comments made by stakeholders.

WORKERS' COMPENSATION ACTS**The Fundamentals****1. The Workers' Compensation Acts do not describe the purpose of the legislation.**

a) Should the purpose be described in the Acts?	Yes = 82 No = 11
b) If yes to (a), what should be the purpose? Please check those things that should be described.	Paying compensation to injured workers = 73 Paying compensations to injured workers' families = 51 All employers are responsible for funding the compensation system = 56 There is a presumption in favour of an injured worker or giving the benefit of doubt to the injured worker by everyone using the WC Act = 42 • All employers and employees are responsible for funding the compensation system.

Authority and Accountability

2. Stakeholders said there must be ways of knowing how well the workers' compensation system works and if the Workers' Compensation Board Board of Directors (WCB Board of Directors) and the Workers' Compensation Board (WCB) are doing their jobs within the rules set out in the *Workers' Compensation Acts*. If they are not doing well, somebody should be able to do something about it.

The Legislative Assemblies of NWT and Nunavut can change the law for workers' compensation by changing the *Workers' Compensation Acts*. The Minister can make regulations (laws) about the workers' compensation system, like how the law applies to certain industries. The NWT Minister appoints members to the WCB Board of Directors. Two of these members are appointed together with the Nunavut Minister responsible for the *Workers' Compensation Act* (Nunavut). The WCB Board of Directors approves Policies to interpret the Acts and to guide the operations of the WCB. The Appeals Tribunal makes decisions about worker and employer appeals of decisions of the WCB.

a) Should the Minister have to have a regular review of workers' compensation legislation?	Yes = 97 No = 3
b) If yes to (a), how often?	Every 5 years = 36 Every 4 years = 5 Every 3 years = 43 More often = 14
c) Should the Minister have to have a regularly scheduled review of WCB Board of Directors' Policies and WCB operations?	Yes = 91 No = 5

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

d) If yes, how often?	Every 5 years = 27 Every 4 years = 4 Every 3 years = 41 More often = 19
e) The NWT Minister appoints members to the WCB Board of Directors. Two of these appointments are made together with the Nunavut Minister. Should the Ministers be able to make these appointments on their own?	Yes = 21 No = 79
f) If no to (e), should the Ministers have to make these appointments with advice from groups who represent employers or workers?	Yes = 81 No = 5
g) If yes to (f), who should nominate or give advice to the Ministers about appointing members to the WCB Board of Directors? Please check all groups who should give advice.	Groups who represent organized workers = 68 Groups who represent organized employers or industries = 78 Groups who represent injured workers = 63 • Groups who serve injured workers such as therapists • All public organizations such as women's groups • Could use employers enrolled • WAO • 2 x Federation of Labour • Write in applicants
h) Should the Ministers have to take the advice of the groups who suggest names for members of the WCB Board of Directors?	Yes = 63 No = 35
i) Should the Acts spell out the responsibility of employers and workers for doing what is described in the legislation?	Yes = 94 No = 3
j) Should there be fines or punishment for employers who do not do what is described in the legislation or who make untrue statements?	Yes = 100 No = 0 • Subject to appropriate appeals proceedings and standards of proof

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

k) Should there be fines or punishment for workers who do not do what is described in the legislation or who make untrue statements?	Yes = 93 No = 6 • Suspension of benefits • 2 x How about WCB when they violate Acts? • Subject to appropriate appeals proceedings and standards of proof
3. The WCB depends on the RCMP and Crown Prosecutor's Office to lay charges and take to court anyone who does not follow the Acts. For example, an employer who lies to the WCB so they don't have to pay assessments or a worker who lies to get higher compensation. It has been suggested that the WCB should be able to lay charges to take someone to court. In order to do this, someone within the WCB must be appointed as a "peace officer."	A peace officer can lay charges, carry out warrants like search warrants, and give evidence in court. A peace officer can also get information more easily from police forces in the NWT and Nunavut and elsewhere in Canada.
a) Do you think the WCB should be given the authority to lay charges and take someone who doesn't follow the Acts to court?	Yes = 59 No = 39
b) Do you think someone within the WCB should have peace officer status?	Yes = 46 No = 52 • Peace Officer should work with the RCMP
Board of Directors	
4. The Acts say that the WCB Board of Directors shall be no more than 7 people, with 2 of the 7 people from Nunavut. There are 7 members now.	
a) Are 7 members the right size for the Board?	Yes = 78 No = 13
b) If no to (a), how many members should there be?	5 = 5 6 = 3 8 = 3 9 = 2 More than 9 = 3

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

c) How many members should there be from Nunavut and how many members should there be from the NWT?	0 NU & 7 NT = 1 1 NU & 6 NT = 2 2 NU & 2 NT = 1 2 NU & 3 NT = 2 2 NU & 4 NT = 2 2 NU & 5 NT = 15 2 NU & 6 NT = 1 2 NU & 7 NT = 1 3 NU & 3 NT = 5 3 NU & 4 NT = 21 3 NU & 6 NT = 1 4 NU & 3 NT = 2 4 NU & 4 NT = 3 4 NU & 5 NT = 2 5 NU & 5 NT = 1 • Rotating chair
5. The NWT Minister appoints the Chairperson of the Board.	
a) Should the NWT Minister be able to appoint the Chairperson on their own?	Yes = 21 No = 74
b) If no to (a), who should nominate or give advice to the Minister about appointing the Chairperson? Please check all groups who should give advice.	The Nunavut Minister = 23 The Board of Directors = 47 Groups who represent organized workers = 35 Groups who represent employers or industries = 45 Groups who represent injured workers = 29 • Should rotate between GNWT/GN • The Board of Directors, with advice from industry
c) Should the NWT Minister have to take the advice of the groups who give them names for the Chairperson of the Board?	Yes = 63 No = 26
6. Members of the Board of Directors are appointed for up to five years. The NWT Minister decides the length of the appointment.	
a) Should the terms of office be set in the <i>Acts</i> ?	Yes = 89 No = 6

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

b) If yes to (a), for how long?	1 years = 2 2 years = 24 3 years = 47 4 years = 10 5 years = 12 • A range of 3 to 5 years
7. The WCB is not able to own "real property", such as an office building.	
a) Should the WCB be able to buy and sell real property on their own?	Yes = 26 No = 66
b) If no to (a), should the WCB be able to buy and sell real property with the approval of the Minister?	Yes = 25 No = 48 • Yes, but on a non-competitive basis
Stakeholder Advisor	
8. There is a Workers' Advisor Office (WAO) located in Yellowknife to help workers get information or files from the WCB; to help a worker talk with the WCB; to explain WCB rules and decisions to a worker; to get information to help workers with their claims; to speak for a worker when decisions about a worker's claim are being made by the WCB or the Appeals Tribunal; and to give workers information about services that may help them. These services are free for the worker. The WCB Board of Directors pays the Workers' Advisor Office for these services.	
a) Is a Workers' Advisor needed?	Yes = 91 No = 7
b) What should be the responsibilities of WAO? Please check all the things that the WAO should do.	Provide advice to workers about workers' compensation = 89 Help workers get info or files from WCB = 89 Help a worker talk to the WCB = 86 Explain WCB rules and decisions to a worker = 84 Get information to help a worker with their claim = 78 Champion the cause of a worker = 48 Provide legal services to a worker = 41 Provide help to a worker in getting and paying for legal services = 51 Speak for workers to the WCB or Appeals Tribunal = 63 Give workers information about services in the community that may help them = 88 • Identifying possible sources of financial assistance

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

c) Should the responsibilities of a WAO be spelled out in the <i>Acts</i> ?	Yes = 86 No = 11 • Broadly
9. The Workers' Advisor Office (WAO) is there for workers. The WCB Board of Directors pays the WAO. The WAO must make regular reports to the WCB Board of Directors. There is concern about a direct relationship between the WAO and the WCB Board of Directors. A direct relationship might not ensure independent action on behalf of workers by the WAO.	
a) Should the WAO be independent from the WCB?	Yes = 76 No = 20 • Emphatic yes!!
b) If yes to (a), how can the WAO be independent? Please check all the things that would make the WAO independent from the WCB.	The Minister, not the WCB, pays the WAO = 29 A government department pays the WAO = 25 Hire the WAO under a contract = 38 The Minister hires the WAO = 19 A government department hires the WAO = 19 Representatives of workers are involved in hiring the WAO = 41 Representatives of injured workers are involved in hiring the WAO = 39 • Minister hires by RFP, terms and conditions establishing arm's length relationship
c) Should the <i>Acts</i> describe how the officers in the WAO get the job?	Yes = 76 No = 16
d) Should there be another WAO in Nunavut?	Yes = 69 No = 22
e) If yes to (d), should the <i>Acts</i> describe the requirement for a WAO in the NWT and in Nunavut?	Yes = 65 No = 11 • Should be Policy

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

f) How should the WAO report on its activities so people will know if the WAO is doing a good job? Please check those things that apply.	No formal report necessary = 2 Regular reports to the Ministers responsible = 59 Regular reports to the WCB Board of Directors = 54 • 7 x Available to the public (i.e.; news article) • Open forum on report such as accessible on the web site • 4 x Report to employers • Reports to workers • Report to hiring authority • 2 x Survey workers who use their service • Report directly to the Legislative Assembly • Tabled in the Legislative Assembly • 3 x Report to Labour representatives • 4 x Printed info to stakeholders • 6 x Federation of Labour • Audit and annual independent review by another contractor
g) Should any reporting requirements for the WAO be described in the Acts?	Yes = 85 No = 9
10. There is no "employers' advisor" (employers' advisor office or EAO).	
a) Is an EAO needed?	Yes = 68 No = 29
b) Should an EAO be independent from the WCB?	Yes = 50 No = 28
c) If yes to (b), how can the EAO be independent? Please check all the things that would make the EAO independent from the WCB.	The Minister, not the WCB, pays the EAO = 19 A government department pays the EAO = 20 Hire the EAO under a contract = 26 The Minister hires the EAO = 11 A government department hires the EAO = 15 Representatives of workers are involved in hiring the EAO = 14 Representatives of employers are involved in hiring the EAO = 23 • Job of WCB staff

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

d) Should the <i>Acts</i> describe how the employers' advisor gets the job?	Yes = 55 No = 18 • Should be Policy
e) Should there be an EAO in both the NWT and in Nunavut?	Yes = 56 No = 16
f) If yes to (e), should the <i>Acts</i> describe the requirement for an EAO in both the NWT and in Nunavut?	Yes = 52 No = 10 • Should be Policy
g) How should the EAO report on its activities so people will know if it is doing a good job? Please check those things that apply.	No formal report necessary = 3 Regular reports to the Ministers responsible = 43 Regular reports to the WCB Board of Directors = 41 • Open forum on report such as accessible on the web site • 4 x Available to the public. • 3 x Report to employers • Report to hiring authority • Survey employers who use their service • Report to Chamber of Commerce • 3 x Report to Labour representatives • 3 x Printed info to stakeholders • Audit and annual independent review by another contractor • Tabled in the Legislative Assembly
h) Should the reporting requirements for the EAO be described in the <i>Acts</i> ?	Yes = 64 No = 9
11. Instead of advisors for workers, and perhaps employers, should there be a "compensation advisors office" that helps both workers and employers?	Yes = 48 No = 47 • Only if there is no conflict. • Let the WCB do its job and focus on workers and employers.
Review and Appeal Process	
12. The first step in the appeal process is an examination of decisions made by WCB staff by an internal Review Committee. There is concern that the internal committee is not objective. If workers or employers are not satisfied with the Review Committee's decisions, they may then appeal the decision to the Appeals Tribunal. This is the second step in the process.	

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

a) Should the first step in the appeals process, the Review Committee, be removed?	Yes = 40 No = 53 • Elimination may cause longer waits for basic claims.
b) If yes to (a), should a dispute resolution process that brings in an outside mediator be required before an appeal is filed?	Yes = 39 No = 12 • 2 x Adjudicate not negotiate • 2 x Independent of WCB
c) If yes to (b), should the dispute resolution process come under the Appeals Tribunal?	Yes = 29 No = 13 • Cannot have an appellate function compromised by this combination.
13. When the Appeals Tribunal is making their decision, they cannot make a decision that does not follow WCB Board of Director's Policies. For example, it doesn't matter if the Appeals Tribunal thinks the WCB Board of Director's Policy is wrong, it cannot change a WCB decision if the WCB has followed Policy. It has been suggested that the Appeals Tribunal should be able to make decisions that change WCB Policy.	
a) Do you think this is a good idea?	Yes = 55 No = 39 • Should be able to recommend policy change • Absolutely
14. There are times that a worker's doctor, the WCB doctors or doctors who are experts in a certain field disagree about a workers' medical condition. It has been suggested there needs to be a way to resolve these disagreements in a way that is fair.	
a) It has been suggested a medical resolutions committee be established. Do you think this is a good idea?	Yes = 83 No = 15
b) If yes to (a), do you think having a medical resolutions committee come under the Appeals Tribunal would ensure fairness?	Yes = 71 No = 14 • 2 x Independent • Should not have wait to this level before the committee is employed. • Cannot compromise the appellate role by creating new evidence at this stage
c) If a medical resolutions committee is established, should the committee's decision about the medical condition of a worker be final and be used as evidence during any dispute resolution process or appeal?	Yes = 72 No = 15

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

15. The NWT Minister appoints the Appeals Tribunal. The NWT Minister appoints 2 members without having to ask for advice. Representatives of workers and employers provide advice or nominate the rest of the members. The NWT Minister gets advice from workers' and employers' groups. The Minister makes the same number of appointments from workers and employers. The Nunavut Minister does not have a say in the appointment of the Appeals Tribunal. This is different from the appointment of the Board of Directors (see Question 2 above). The NWT Minister appoints a chairperson and vice-chairperson for the Appeals Tribunal on the recommendation of its members. Members are appointed for up to 3 years and may be re-appointed. The NWT Minister decides the length of the appointment.	
a) Should the NWT Minister be able to appoint members without a nomination by representatives of workers and employers?	Yes = 19 No = 76
b) Should the NWT Minister be able to appoint members without the involvement of the Nunavut Minister?	Yes = 18 No = 73
c) Should representatives of injured workers be one of the groups nominating members of the Appeals Tribunal?	Yes = 60 No = 33
d) It has been suggested that the Chairperson of the Appeals Tribunal should be a full time position. Do you think this is a good idea?	Yes = 52 No = 36
e) Should the terms of office be set out in the <i>Acts</i> ?	Yes = 86 No = 5
f) If yes to (e), for how long?	1 years = 4 2 years = 26 3 years = 44 4 years = 4 5 years = 9 • 3 years renewable
g) Should there be two Appeals Tribunals – one for Nunavut and one for the NWT?	Yes = 46 No = 41
16. There is concern about the independence of the Appeals Tribunal. The WCB provides administrative support to the Appeals Tribunal.	
a) Should the Appeals Tribunal have its own support staff separate from the WCB administration?	Yes = 63 No = 36
17. There is concern about time limits for making an appeal and for having an appeal considered by the Appeals Tribunal. There are no time limits for workers or employers to make an appeal. There are no time limits for the Appeals Tribunal to hear an appeal and make a decision.	

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

a) Should there be a time limit for a worker to make an appeal?	Yes = 67 No = 31
b) If yes to (a), how long after the WCB administration has made a decision should a worker have to file an appeal?	6 Months = 30 1 Year = 30 2 to 3 Years = 7 3 to 5 Years = 0 More = 3
c) If yes to (a), should the deadline be extended if there are circumstances beyond a worker's control that stop them from making an appeal within the time limit?	Yes = 66 No = 4
d) Should there be a time limit for an employer to make an appeal?	Yes = 79 No = 17
e) If yes to (d), how long after WCB administration has made a decision should an employer have to file an appeal?	6 Months = 40 1 Year = 35 2 to 3 Years = 5 3 to 5 Years = 0 More = 1 • 90 days
f) If yes to (d), should the deadline be extended if there are circumstances beyond an employer's control that stop them from making an appeal within the time limit?	Yes = 74 No = 8
g) Should there be a time limit on when the Appeals Tribunal must hold a hearing after an appeal has been filed?	Yes = 92 No = 4
h) If yes to (g), how long?	1 Month = 26 2 Months = 16 3 Months = 27 More than 3 Months and less than 6 Months = 19 More than 6 Months = 4
i) If yes to (g), should the time limit be extended if there are circumstances beyond a worker's or employer's control that stop them from being prepared for an appeals hearing within the time limit?	Yes = 83 No = 8

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

j) Should there be a time limit on when the Appeals Tribunal must make a decision and complete its report after a hearing(s) is completed?	Yes = 92 No = 0
k) If yes to (j), how long?	2 Weeks = 19 1 Month = 31 2 Months = 18 3 Months = 14 More than 3 Months and less than 6 Months = 11
18. There is no time limit on how quickly the WCB must act on a decision of the Appeals Tribunal.	
a) Should the WCB have to implement a decision of the Appeals Tribunal within a certain period of time?	Yes = 97 No = 1
b) If yes to (a), how long?	Less than 1 Month = 35 1 Month = 24 2 Months = 7 3 Months = 22 More than 3 Months = 7
c) If the Appeals Tribunal filed its decision with a law court in the NWT or Nunavut would this help to ensure the WCB followed decisions of the Appeals Tribunal?	Yes = 62 No = 24
Compensation	
19. Workers who are hurt on the job and have to miss work without pay for a short time get money as compensation from the WCB. Paying compensation when a worker cannot be at work because of their injury, and is not being paid by their employer, is called a "wage loss" approach. The way compensation is paid is different when an injured worker is permanently disabled because of an injury on the job or has an ongoing illness because of their work. Then the money is paid as a permanent pension and is based on the worker's disability or illness. In other words, ongoing pensions are based on a "disability or impairment" approach. The amount of an injured worker's wages is only one of the factors used in deciding how much the permanent compensation (the pension) will be.	

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

a) It has been suggested that when an injured worker is getting compensation for a permanent disability, the amount of money should be based only on the wages lost and not on the type of disability. With this approach, if the injured worker is able to earn wages at some time in the future, the amount of compensation paid by the WCB is reduced by what the injured worker is able to make. Do you think this is a better approach than the current system?	Yes = 62 No = 29 • This could discourage people from working at all.
b) It has been suggested that an injured worker may have other losses in addition to the wages lost as a result of a workplace injury, for example psychological effects. It has also been suggested that an injured worker should get money compensation if this happens. Do you think this is a good idea?	Yes = 54 No = 36
20. Injured workers may get vocational rehabilitation as part of the compensation for a workplace injury or disease. Vocational rehabilitation is special programs to help injured workers get ready to go back to work in different jobs. The Workers' Compensation Acts do not describe what kinds of vocational rehabilitation should be available to injured workers.	
a) Do you think the Acts should be changed to describe the kind of vocational rehabilitation programs for injured workers?	Yes = 73 No = 21 • Should be Policy
b) If yes to (a), what should be described in the Acts?	Definition of Vocational Rehabilitation = 56 Who qualifies for Vocational Rehabilitation = 66 Vocational Assessments = 58 Re-employment programs = 56 Vocational Rehabilitation support services = 58 Quality of Life programs = 50 • New job opportunities should be reviewed if not on the list. • Whatever is needed • Training and education • Support to free choice • Follow-up counseling • Obligation of WCB to provide

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

c) Do you think the wife, husband or children of injured workers should be able to get vocational rehabilitation from the WCB?	Yes = 38 No = 49
21. Injured workers may apply for a clothing allowance up to \$100 per year to replace or repair clothes damaged by wearing an artificial limb or appliance (such as a knee brace). There is concern that up to \$100 a year is too low. There is also concern that an injured worker's clothes get damaged from things related to their injury or disability other than artificial limbs and appliances.	
a) Should the maximum amount of the annual clothing allowance be increased?	Yes = 82 No = 13
b) If yes to (a), increased up to what amount?	\$200 to \$500 = 47 \$500 to \$750 = 16 \$750 to \$1,000 = 10 More than \$1,000 = 6 • 2 x Depends on the situation. • \$200 • \$300
c) Who should be able to change the amount of the allowance?	Legislative Assembly = 17 Minister = 15 WCB Board of Directors = 64 • Doctor • Labour representatives
d) Should the cause of the damage to clothes be changed to include other equipment required as a result of a workplace injury or disease, such as wheelchairs?	Yes = 80 No = 10 • Should be Policy
22. There are concerns about the amount of money or other compensation that injured workers receive to help them live with their injury or disability and so that they don't have to depend too much on others (their quality of life). Examples of quality of life compensation are money to make changes to a car or truck so the worker can still drive, or housekeeping services for things an injured worker cannot do. There are also concerns that the Acts do not describe when quality of life compensation is paid and about the amount of compensation for quality of life.	
a) Do you think the Acts should be changed to describe what types of quality of life compensation there should be?	Yes = 81 No = 16

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

b) Who should be able to change the amount of compensation paid for quality of life?	Legislative Assembly = 21 Minister = 17 WCB Board of Directors = 59 • WCB Board of Directors to recommend to the Minister • 2 x Labour representatives
23. There is concern that some workplace injuries or diseases are not compensable (in other words, an injured worker cannot get compensation for them). These injuries or diseases are often hard to describe or discover. It may also be hard to say the injury or illness is a result of a worker's job.	
a) Do you think chronic pain should be compensable?	Yes = 62 No = 29 • Depends on case by case • If work related
b) Do you think workplace (occupational) stress should be compensable?	Yes = 49 No = 45 • If proven to be a long term disability
c) Do you think the effects of workplace harassment should be compensable?	Yes = 42 No = 52
d) Do you think the effects of substance abuse (e.g. alcohol abuse) should be compensable?	Yes = 24 No = 69
e) If yes to (a), (b), (c) or (d), do you think the way compensation is calculated for these injuries or diseases should be different than for other injuries or diseases?	Yes = 38 No = 29
24. The Year's Maximum Insurable Remuneration (YMIR) is described in the Acts. The YMIR is the most the WCB will pay each year to an injured worker even if the worker used to make a higher wage. There is concern about the time it takes to change the YMIR because only the Legislative Assemblies are able to change it. It has been suggested that the current YMIR (\$63,350) is too low. It has also been suggested that the YMIR should automatically change when things like the Consumer Price Index change.	
a) Do you think the YMIR should be established by the Legislative Assembly and changed only when a change is made to legislation?	Yes = 38 No = 57 • Tied in the Act to the cost of living

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

b) If no to (a), who should have the authority to set the YMIR?	Minister = 24 WCB Board of Directors = 43 • Employees/employers • 3 x Labour representatives • Minister on recommendation from WCB • Both
c) Do you think a formula to automatically change the YMIR when economic conditions change (such as a change in the Consumer Price Index) should be set in the Acts?	Yes = 74 No = 22
d) Do you think an injured worker's actual wages should be used when calculating money compensation even if that worker made \$100,000 a year?	Yes = 63 No = 29 • Not to include overtime
e) Do you think there should be a minimum amount used when calculating money compensation even if it is more than what an injured worker made?	Yes = 46 No = 44 • Actual wages when hurt
f) Do you think that there should be different YMIRs for different communities or groups of communities in the NWT and Nunavut?	Yes = 33 No = 60
25. There is a Harvesters Program that gives money as compensation to harvesters who are injured when hunting, trapping or fishing. The program does not cover harvesters when they are getting ready to hunt, trap or fish. It does not cover them when they are doing things related to their harvesting activities after they get back from the harvest. The program was first started to cover subsistence harvesters. The territorial governments pay the WCB all the costs of the Harvesters' Program. The harvesters' YMIR (\$24,000) has not been changed since 1994. It has been suggested this is too low.	
a) Should the WCB be responsible for administering the Harvesters' Program?	Yes = 43 No = 41
b) If no to (a), who should?	Government department responsible for harvesters = 41 • Labour representatives • Hunters and Trappers Associations
c) Do you think the YMIR for the Harvesters' Program is too low?	Yes = 54 No = 20

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

d) If yes to (c), what should the maximum be?	\$24,000 to \$30,000 = 9 \$30,000 to \$40,000 = 19 \$40,000 to \$50,000 = 15 More than \$50,000 = 3 • Depends on the situation • Since there is no employer, the program should match whatever the Governments are prepared to pay for.
e) Do you think the Harvesters' YMIR should be set by the Legislative Assemblies and changed only by changing the Acts?	Yes = 30 No = 41
f) If no to (e), who should have the authority to set the YMIR?	WCB Ministers = 6 Ministers responsible harvester programs = 24 WCB Board of Directors = 24 • Input from Harvesters • Both
g) Do you think a formula to automatically change the Harvesters' YMIR when economic conditions change (such as a change in the Consumer Price Index) should be set in the Acts?	Yes = 50 No = 24
h) Do you think harvesters should be covered when they are preparing to go out and finishing off harvesting work after they get back?	Yes = 51 No = 24
26. A worker's net wages are used for figuring out how much money to pay in compensation. Income tax, Employment Insurance premiums and contributions to the Canada Pension Plan are taken off total wages to get to the net. It has been suggested that Employment Insurance premiums should not be taken off a worker's wages when figuring out the amount of their compensation.	
a) What should a worker's net wages be based on? Please check all those things that should be deducted when figuring out net wages.	Income Tax = 79 Employment insurance premiums = 43 Canada Pension Plan contributions = 47 • It depends on whether income tax is deducted from compensation payments. Are compensation payments insurable earnings? My answer would depend on how these questions are answered. • UIC only if we can use the UIC system after injury

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

27. It has been suggested that any Employment Insurance income should be added when figuring out net yearly wages for seasonal workers. Net yearly wages are used when figuring out compensation for an injured worker.	a) Do you think this is a good idea?	Yes = 55 No = 36	Employers = 20 WCB = 32 Workers = 26 • Government / EI • Federal government • Shared • This is a loaded and unfair question meant to get targeted at employees
28. There is concern about the amount of compensation that is paid when a worker dies from a workplace accident or illness. The Acts describe the payment of a lump sum equal to 4% of YMIR or about \$2,500 to the husband or wife; money for funeral services up to 4% of YMIR; and pensions for the husband or wife (about \$20,000 a year) and to children (about \$4,700 a year). The 4% has not changed since 1977. It has been suggested these amounts are too low. It has also been suggested that the Acts do not take into account different family situations, for example, there are no lump sum benefits for a worker's parents if the worker was not married.	a) Should the amount of compensation paid on the death of a worker be described in the Acts?	Yes = 80 No = 13 • Should be Policy	Minister = 11 WCB Board of Directors = 22 • Independent adjudicator • Should be Policy • On Board separate to anyone Yes = 86 No = 8
b) If no to (a), who should approve the amount of compensation paid when a worker dies from a workplace accident or illness?	c) Do you think the amount of compensation is too low?	Yes = 66 No = 27 • Unless they are dependants • 6 x Unless the worker was living with parents and contributing to family income. • Only enough to help with funeral and burial costs	d) Do you think that the parents of an unmarried worker should receive compensation if the worker dies from a workplace accident or illness?

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

29. The WCB may "commute" a worker's ongoing pension. This means the worker gets one lump sum payment and the pension stops. The WCB does this only if the worker asks. The Acts do not describe any conditions for paying a lump sum payment to a worker.	
a) Should the WCB always have to commute a worker's pension if the worker asks for it?	Yes = 35 No = 59
b) If no to (a), should the worker have to have a reason for asking for a lump sum payment?	Yes = 53 No = 17
c) If yes to (b), what are good reasons to commute a pension?	Purchase a house or pay down a mortgage = 38 Buy a business = 30 • Hardship • To be discussed with worker reps • Gainful employment • Bury a family member/funeral costs • 3 x Financial problems stemming from being on compensation • Should only rarely be allowed • There is no good reason pensions should not be commuted. • Medical • 3 x Worker should deem his/her own needs • Any worthwhile endeavor • 2 x Education • Home renovations for access, etc. • 2 x any reason that will improve overall quality of life • Any reason
d) If no to (a), should a worker have to show the WCB that they know how to use the money?	Yes = 40 No = 28
e) Do you think the Acts should describe when and how workers could ask for lump sum payments instead of an ongoing pension?	Yes = 70 No = 20

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

f) If no to (e), who should decide when and how a worker can get a lump sum payment?	Minister = 5 WCB Board of Directors = 22 • With doctor's advice • Minister responsible for Income Support • 3 x Worker input • Worker and Employer Advisors Offices • Both • Special committee
Assessments	
30. Employers pay "assessments" to the WCB to fund the workers' compensation system. Assessments are based on the amount of net wages for their workers. It has been suggested that some benefits paid to workers, such as vacation travel assistance, should not be included in the calculation of net wages.	
a) Should employment benefits such as vacation travel assistance be included when calculating the net wages or the assessable payroll?	Yes = 45 No = 52
31. Sometimes workers from outside the NWT and Nunavut work in the territories for a short time. For example, truck drivers from Alberta are working in the NWT when they drive up to deliver their goods. Another example is bringing in specialist workers for a short time. These workers do a job and then leave right away. These workers are usually covered by the workers' compensation system in their home province or Yukon. The NWT and Nunavut WCB must also cover them and their employer must pay assessment premiums here. It has been suggested that it doesn't make sense for these workers to be covered twice.	
a) Should the Acts be changed to let workers from outside the NWT and Nunavut work in the territories for a short time without assessing their employer twice?	Yes = 83 No = 15 • One month

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

b) If yes to (a), what should be the definition of a short time?	Less than 5 days at a time = 20 5 days at a time = 7 5 to 10 days at a time = 41 • 3 x 1 to 30 days • Less than 4 months • More than 10 days if their job crews move around (3 months) • Duration of employment period • 90 days • 2 weeks • 3 x 3 months (same as health cards) • all Boards should agree on a timeframe
Industrial Classifications	
32. The WCB Board of Directors divides employers into industrial classes and sub-classes. For example, "services" is an industrial class and "accommodation, food and entertainment" is a sub-class within services. There is concern about the way the WCB has classified different employers. It has been suggested that the WCB Board of Directors should consult employer groups or individual employers before approving changes to classes or sub-classes.	
a) Do you think the WCB should consult with employers before changing industrial classifications?	Yes = 88 No = 7
b) If yes to (a), do you think this consultation should be described in the <i>Acts</i> ?	Yes = 74 No = 15
33. Under the <i>Acts</i> the WCB Board of Directors can use different assessment rates for employers in the same industrial class or subclass. For example, the assessment rate for a company with a high accident rate could be higher than a company in the same kind of business that has a low accident rate. A few years ago, the WCB Board of Directors approved a program of penalties for employers with poor safety records. Later, the Board did not feel the program was helping to meet the goal of safer workplaces and stopped the program. It has been suggested that a program to reward employers for establishing and maintaining safe workplaces should be reconsidered.	
a) Do you think a reward program for safe employers is a good idea?	Yes = 89 No = 4
b) If yes to (a), who should approve the program?	Legislative Assembly = 19 Minister = 16 WCB Board of Directors = 62 • Labour representatives

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

Accident Fund	
34. The Accident Fund is the fund where the assessments paid by employers and other monies, such as investment income, go to pay for the workers' compensation system and administration of the <i>Safety Act</i> . The Accident Fund is "fully funded". Fully funded means that there is enough money in the Accident Fund to pay the current and future compensation now owing to workers who have been injured and to pay for administration of the workers' compensation and safety systems. It has been suggested that the Accident Fund should always be fully funded. There is also concern that since the money in the Accident Fund comes from employers, government should never be able to tell the WCB Board of Directors how to invest the money.	
a) Should the <i>Acts</i> say that the Accident Fund must always be fully funded?	Yes = 85 No = 8
b) Should the <i>Acts</i> specifically stop government from telling the WCB Board of Directors how to invest money from the Accident Fund?	Yes = 56 No = 31
Access to Information	
35. The <i>Acts</i> describe who can or cannot get information from the WCB about workers or employers. There is concern about getting information about Review Committee and Appeals Tribunal decisions. For example, the <i>Acts</i> do not say how the Workers' Advisor Office (WAO) gets information like the files of injured workers. There is concern about the difficulty in getting information about WCB procedures and decisions of the WCB Board of Directors.	
a) Should the minutes of the WCB Board of Directors' meetings be available to the public?	Yes = 81 No = 16 • Yes except for in camera sessions
b) If yes to (a), should there be exceptions for things like legal advice or discussions on staff matters?	Yes = 64 No = 18
c) If yes to (a), should access to the minutes be in the legislation?	Yes = 70 No = 8
d) Should the WAO be able to get information from an injured worker's file without their permission?	Yes = 21 No = 74
e) Should the way WAO gets information from the WCB be described in the <i>Acts</i> ?	Yes = 88 No = 6
f) Should information about Review Committee and Appeals Tribunal decisions be available to the public?	Yes = 74 No = 22
g) If yes to (f), should this be described in the <i>Acts</i> ?	Yes = 75 No = 5

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

h) If no to (f), should an injured worker and the WAO be able to get information about Review Committee and Appeals Tribunal decisions?	Yes = 35 No = 2
i) If yes to (h), should this be described in the <i>Acts</i> ?	Yes = 47 No = 6
j) If yes to (a), (d), (f) or (h), should a time limit be placed on when the information must be made available?	Yes = 76 No = 8
k) If yes to (j), should the time limits be described in the <i>Acts</i> ?	Yes = 75 No = 3
Employer Responsibilities	
36. There is concern that employers do not have to "accommodate" or re-employ an injured worker in the same job, or another job that they can do, after the worker recovers from a workplace injury or illness. There is also concern that this "duty to accommodate" an injured worker would not be possible for small employers. There is concern that the <i>Acts</i> do not stop an employer from firing a worker because of a workplace injury.	
a) Should the <i>Acts</i> be changed to make employers re-employ a worker?	Yes = 48 No = 42 • Depends on the length of time off
b) If yes to (a), should only large employers have to re-employ workers?	Yes = 30 No = 28
c) If yes to (b), how many employees must a "large" employer have?	20 full time employees = 19 20 to 25 full time employees = 5 25 to 30 full time employees = 1 More than 30 full time employees = 9
d) If yes to (a), should employers only have to accommodate employees that have been with them for a certain length of time?	Yes = 32 No = 24 • Past probation
e) If yes to (d), how long should an employee have worked for an employer before they have to be accommodated?	Less than 6 months = 3 6 months to 1 year = 18 1 year = 6 2 years = 8 • 5 years • No limit • More than 5 years (for small businesses)

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

f) If yes to (a), should employers have to give a recovered worker back their old job?	Yes = 31 No = 22
g) If yes to (a), should employers have to give a recovered worker a different job if the worker can't do their old job?	Yes = 43 No = 6 • Should be Policy
h) If yes to (a), should employers have to provide specialized equipment (like a voice-activated computer) for a recovered worker so that they can do a job?	Yes = 32 No = 15
i) If yes to (a), should there be a time limit after the worker is injured for an employer to re-employ the worker?	Yes = 40 No = 8
j) If yes to (i), how long?	2 years after the date of injury = 10 1 year after the worker is recovered = 26 • Should vary case by case • 2 x 6 months • When capable to return • ASAP after worker has recovered
k) Should the WCB pay employers to "top-up" a recovered or recovering worker's wages if the only job they can do pays less than their old job?	Yes = 61 No = 17
l) Should an employer be stopped from firing a worker who has come back to work after an injury?	Yes = 48 No = 31 • Not if fired for a legitimate reason.
m) If yes to (l), for how long after the worker comes back to work?	3 months = 7 3 to 6 months = 8 6 months = 17 • 3 x Depends on circumstances • 3 x 1 year • 4 x Indefinitely • 2 years + • 3 x never

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

Framework for Administration

37. The Acts describe what the WCB must keep in mind when decisions are made. For example, any decisions will be made on the merits of each case and not on any other case. Also, when looking at evidence and medical opinions, any interpretation will be in favour of the worker. There is concern that the Acts are not clear about what the WCB must do.

a) Should decisions be based on precedent (what was decided in other cases) rather than on the merits of each case?
Yes = 29
No = 58
• Except in matters of law

b) If yes to (a), should this be described in the Acts?
Yes = 35
No = 2

c) It has been suggested that there should be a "Client Bill of Rights"? Do you think this is a good idea?
Yes = 62
No = 17

d) If yes to (c), should a client bill of rights be described in the Acts?
Yes = 62
No = 8

38. When the WCB is making decisions about an injured worker's condition, the injured worker has to see the doctor the WCB wants them to see. The WCB has hired a Medical Advisor (a doctor) to help make these decisions. It has been suggested that the Medical Advisor may not be fair to the worker when there are disagreements about a worker's condition because the Medical Advisor works for the WCB.

a) Do you think that the injured worker should have some say about the doctors who are making decisions about their medical condition?
Yes = 73
No = 19
• His doctor he sees on his own doctor's advice and not WCB medical advisor

SAFETY ACTS

Authority and Accountability of the Workers' Compensation Board of Directors

39. The responsibility for administering the Safety Act was given by the GNWT to the WCB in 1996. Before that, the territorial government was responsible. In some provinces the government is responsible for safety; in others, it is the WCB.

a) Do you think the WCB should keep the responsibility for administering the Safety Acts?
Yes = 68
No = 27

40. It has been suggested that the Ministers responsible and the WCB need to have advice from employers and workers about workplace safety on a regular basis.

a) Should an Advisory Council on Workplace Occupational Health and Safety be established?
Yes = 85
No = 7

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

b) If yes to (a), should the role of an Advisory Council be described in the <i>Acts</i> ?	Yes = 79 No = 6
c) If yes to (a), who should appoint the members?	WCB Board of Directors = 42 Ministers = 38 • 2 x Both • 3 x Employees/Employers • Public - electoral style • All related groups • Employer and worker representatives • 2 x employers • 4 x Labour representatives
d) How often should the Advisory Council meet and provide advice?	Quarterly = 30 Twice a year = 34 Once a year = 17 Once every two years = 1 • Quarterly or as needed
41. A code of practice is a law that describes how something must be done, for example, how scaffolding must be set up and used. It has been suggested that it takes too long to bring in or change codes of practice for safety in the workplace because they have to be approved as regulations. There is concern that codes of practice cannot be changed quickly to take into account changing technology or reports of accidents.	
a) Should the way codes of practice are put into law be changed?	Yes = 78 No = 12
b) If yes to (a), who should have the authority to change codes of practice?	WCB Board of Directors = 19 WCB Board of Directors on the recommendation of the Chief Safety Officer = 54 Chief Safety Officer = 15 • 2 x Worker and employer groups • Council of employers who pay premiums • 3 x Labour representatives • Safety Act separate from WCB
42. Where there are serious infractions of the <i>Safety Acts</i>, the WCB investigates the situation and the alleged offender may be charged and have to go to court. The Crown Prosecutor's Office is responsible for laying charges. Some have suggested that this can be a slow process.	

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

a) Do you think the WCB should be given the authority to lay charges and take someone who doesn't follow the <i>Safety Acts</i> to court?	Yes = 46 No = 45
43. If workers or employers do not follow the <i>Safety Acts</i> they may be fined or put in jail. Employers are responsible for having safe workplaces. Workers are responsible for working safely. It has been suggested that it is not fair to penalize workers if an employer does not provide a safe workplace.	
a) Do you think workers should be fined if an employer does not follow the <i>Safety Acts</i> ?	Yes = 27 No = 63 • Only if personally responsible for the infraction • Loaded question • Reciprocal responsibility
Safe Workplaces	
44. It has been suggested the definition of a safe workplace needs to be changed. There is new scientific knowledge about the effects of tobacco smoke. There are also changes in the way people look at human rights.	
a) Should a safe workplace be one free of environmental tobacco smoke (ETS)?	Yes = 70 No = 23
b) If yes to (a), should legislation describe the hazards of ETS?	Yes = 61 No = 12 • Should be in Health Act
c) Workplace harassment is described as any behaviour towards a worker that demeans, embarrasses or humiliates the worker, and which the harasser ought reasonably to know would be unwelcome. Should a safe workplace be one free of workplace harassment?	Yes = 83 No = 11 • This issue should not be dealt with by the WCB. • Ambiguous
d) If yes to (c), should legislation describe the hazards of workplace harassment?	Yes = 66 No = 15 • 2 x Described in the Canada Labour Code
Joint Work Site Health and Safety Committees	
45. The Chief Safety Officer may say that a Joint Work Site Health and Safety Committee must be established in a particular workplace. The <i>Acts</i> do not say there must be Joint Work Site Health and Safety Committees. It has been suggested that the <i>Acts</i> should be changed to require such joint committees at work sites.	

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

a) Do you think the Acts should be changed to require the establishment of Joint Work Site Health and Safety Committees?	Yes = 68 No = 19
b) If yes to (a), do you think the requirement to establish such committees should be based on the number of workers at a work site?	Yes = 57 No = 15
c) If yes to (b), how many workers?	10 regular workers = 18 15 regular workers = 8 20 regular workers = 12 25 regular workers = 1 More than 25 regular workers = 19 • 5 regular workers
Employee Assistance Programs	
46. It has been suggested that employers should offer an employee assistance program to their workers to contribute to safe workplaces.	
a) Do you think an employee assistance program is a good idea?	Yes = 71 No = 19
b) If yes to (a), do you think there should be a law that requires employers to have employee assistance programs?	Yes = 34 No = 40 • This should be done by employers without pressure.
c) If yes to (b), who should approve the law?	Ministers = 9 Legislative Assemblies = 32
d) If yes to (b), do you think the requirement to have such programs should be based on the number of workers regularly employed?	Yes = 32 No = 10
e) If yes to (d), how many workers?	10 regular workers = 15 15 regular workers = 6 20 regular workers = 3 25 regular workers = 3 More than 25 regular workers = 7

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

Additional Comments

- Survey too long
- A very cumbersome survey. Questions are leading, and it seems that the agenda is set.
- This is extremely detailed, and I am not sure I had enough info to make a decision. It is also extremely hard to read and comprehend without being a lawyer.
- Good comprehensive package. Good luck with the review.
- It doesn't make sense for someone to judge another's condition when they haven't seen the injured person and evaluated honestly.
- We respond to this from respect of the first aid industry. We only answered the questions relevant to the first aid industry.
- Compensation should be quick and easy to acquire when an employee is injured at work. Delays and such make things difficult for the worker as well as his or her family. These red tape processes have to be sped up in all cases, as many people depend on their income from whatever source.
- Doctors are human and are subject to human emotions, etc. To answer honestly, more information is needed.
- Independent panel of doctors
- Harassment: what can be harassment to one person may not be for another. Personality conflicts may play a part in this. Stress: very ambiguous and is often used as an excuse for all sorts of things.
- WAO is a fulltime job if it is done properly. WAO needs to be more independent from WCB. Increase size of Appeals Tribunal to reduce response time.
- Instead of paying benefits, take term insurance for life loss, make settlements from insurance. Employer pays premium. WCB should not charge. All time limits should be communicated to injured workers.
- Workers often prefer a family doctor who is sympathetic and/or known to favor workers. Clearly define workers' culpability re: fraud claim, carelessness, etc...
- Re: employer responsibilities, depending on the employee's injuries, they should use discretion to some degree.
- Accountability and common sense go a long way instead of a "client's Bill of Rights".
- Nunavut should have its own Board
- Doctors are governed by codes of ethics and the College - Standards of Practice and treatment should be the only guidelines assessed; i.e.; did the medical reports meet prescribed standards, etc...
- Employee assistance programs should be funded by WCB, RDC (sic) and other stakeholders, but employers should have to refer workers as a condition of employment.
- Doctors should not be poorly treated in the name of WCB economy.
- We should be able to get our injuries looked at and dealt with in a proper medical fashion.
- This survey is way too long.

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

Additional Comments

- Better controls to stop employee abuse of the system. All companies should pay the same rate for WCB. Special recognition awards of a significant nature can be given to the employees and owners of great companies with excellent safety records that aren't "fudged."
- Employers and workers own the fund. Carefulness must be used to define parameters of revenues from investment vs. methodology of repayment to stakeholders.
- Only governments' who are the big contributors, should appoint Board members and Chair.
- Pension income should increase if injuries become worse, either due to age or loss of job because of shortage of work.
- WCB should be responsible for WCB, and Safety should be a separate division.
- Let us not forget that in our unique environment we are mainly comprised of small businesses. Let us not burden them with too much red tape and administrative nightmares. In this way they fully wish to participate with WCB instead of trying to find ways around it. It is a very difficult program itself right now. Most small businesses find it confusing. Another thing to keep in mind is workers injured who do not reside permanently in the NWT or Nunavut. Cost of living is cheaper, and some type of accounting of this should be calculated in when deciding their compensation packages. Should they receive a higher level of compensation than what they received in their own province or territory? I think not. Communication with other WCB jurisdictions should be upgraded. Currently, in my opinion, there is no communication or even partnership with them when there should be.
- Question #3: if the WCB is given authority to lay charges, what about charging the WCB and staff when they don't follow the acts?
- Question #12: no need for the review committee if an independent medical panel was formed.
- I feel that with the establishment of an independent medical panel and the removal of the Medical Advisor, the role of WCB should be that of records keeper and retraining. Also WCB could concentrate on more safety courses, etc. In today's workplace more and more medical injuries are repetitive injuries. Why not form a medical panel or a medical examination every three to four years to detect the injury, like what is done for professional truck drivers. This in turn might catch the injury before it becomes serious. This, I think, would be a benefit to everyone. This test could be done on carpenters, electricians, mechanics, etc. (also computer people). I think that if more time was spent on training for safety, these courses could be put in place by WCB. This would give the new people entering into construction or mining fields an insight on what to watch for and how protect themselves from injury. Safety officers should have experience in the fields which they are overseeing, not just go and take a course and you're a 'safety man.'
- The Canadian Red Cross has been offering First Aid to Canadians for over thirty years and has been offering first aid training to the NWT and Nunavut for over ten years. During that time Canadian Red Cross has:
 - trained over 3300 people in Nunavut and the Northwest Territories in the last two years;
 - certified and trained over 25 Standard First Aid Instructors in the NWT and Nunavut;
 - authorized 7 businesses to offer Red Cross First Aid training in Nunavut;
 - authorized 10 businesses to offer Red Cross First Aid training in the Northwest Territories;

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

Additional Comments

- authorized Providers to offer training programs in Inuvik, Ekati, Fort McPherson, Hay River, Fort Smith, Rankin Inlet, Cambridge Bay, Pond Inlet, Iqaluit, Yellowknife, and throughout the entire Gwich'in, Sahtu, and Inuvialuit Regions;
- set up a toll-free number to access course information and availability for the entire north; and
- been an active member of the Canadian Emergency Cardiac Care Coalition.
- The Canadian Red Cross Society comments regarding the Worker's Compensation Legislative Review Panel: Thank you for sharing the Stakeholders' questionnaire with us and for offering us the opportunity to respond. We have selected to provide you with a few suggestions for your review, as opposed to completing the questionnaire.
- Re: Question No. 33: Industrial Classifications: We believe that a rewards program for safe employers is a good idea. Rewards programs have proven themselves in other areas of Canada (Alberta, for example). The Canadian Red Cross would be pleased to support you in implementing a safety rewards program.
- Re: The Safety Act: We would like to suggest that you might wish to consider regulating the use of automated external defibrillators in the workplaces of NWT/Nunavut. AEDs are becoming more and more common in the workplaces across the country. Legislators and physicians are working both nationally and in many provinces to insure public access to defibrillation. The Canadian Red Cross Society has incorporated an orientation to defibrillators in all of our Standard and Emergency First Aid training programs. This is becoming standard practice among the national training agencies. A certified AED program is also available from Red Cross and we believe that it is important for the Worker's Compensation Board to regulate the incorporation of these machines into workplaces in the NWT/Nunavut Territories. Red Cross would be happy to support you in developing these guidelines. www.heartandstroke.ca provides additional information about defibrillation and the benefits of public access to these machines.
- On page 3, of the existing General Safety Regulations: A "first aider" is defined as a person who holds a certificate of qualification in standard first aid issued by the Priority of Canada of Most Venerable Order of the Hospital of Saint John of Jerusalem, or an equivalent certificate of qualification acceptable to the Chief Safety Officer." We would like to suggest that you explore the rewarding of this definition to be more congruent with the new wording in the Federal Workplace Health & Safety Regulations, approved in August of 2000. The federal regulation states: "16.12 (1) An organization that wants to obtain the approval of the Minister for offering courses in first aid shall apply for it in writing to the Minister. (2) The application shall be accompanied by the description of the proposed courses. And (4) The Minister shall approve an application by an organization to offer courses in the basic and standard first aid if the organization's training program contains the elements and meets criteria set out in Schedule V in this Part." Schedule V provides a list of topics that must be covered in the approved courses. We believe this method insures that the topics covered in the courses are consistent and in keeping with the needs of the workplaces in the NWT/Nunavut. Red Cross was recently involved in the rewriting of similar legislation in the province of Alberta. Here, workplace injury statistics were used to determine which topics are most critical and must be included in all courses.

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

Additional Comments

- Thank you for the opportunity to comment in this questionnaire. A couple of brief comments. Some questions were very difficult to answer:
Q2(h) – it is unclear whether they would have to TAKE the advice of the groups or ACT upon the advice taken from the groups.
Q43 is a loaded question. I think the question should be whether employees can be penalized for not working safely when an employer HAS provided a safe workplace.

There also is a thread throughout this questionnaire suggesting that the employees of the WCB cannot be trusted to fairly represent a worker's interest (See question 9). Given that the mandate of the WCB includes erring on the side of workers, I find that thinking unsubstantiated. Many employers would argue convincingly that employees of the WCB are unable (or unwilling) to fairly represent their interests.

Finally, I would offer a strong caution on what the WCB's role in society is meant to be. It is to compensate for the lost wages, and assist in returning workers to the workplace. IT IS NOT MEANT TO BE AN ALL-ENCOMPASSING SOCIAL PROGRAM. What follows is a brief excerpt from a CAODC response to the Alberta WCB's suggestions that the EI earnings be part of insurable earnings:

Employment Insurance Earnings (EI) should not be included. EI is already an income replacement program. WCB benefits should replace actual employment earnings, not replace income from another income replacement program.

Severance packages should likewise not be eligible for WCB benefits.

We believe that straight wages and salary should be used to calculate benefits. Other benefits typically come through the normal course work. It is a reasonable expectation that the WCB is a replacement mechanism for gross wages and salaries and that this expectation should include overtime pay and commissions.

A very important general comment needs to be made: DO NOT REPLACE EARNINGS THAT DO NOT EXIST. This is especially important, as funding for the WCB comes from actual payroll amounts.

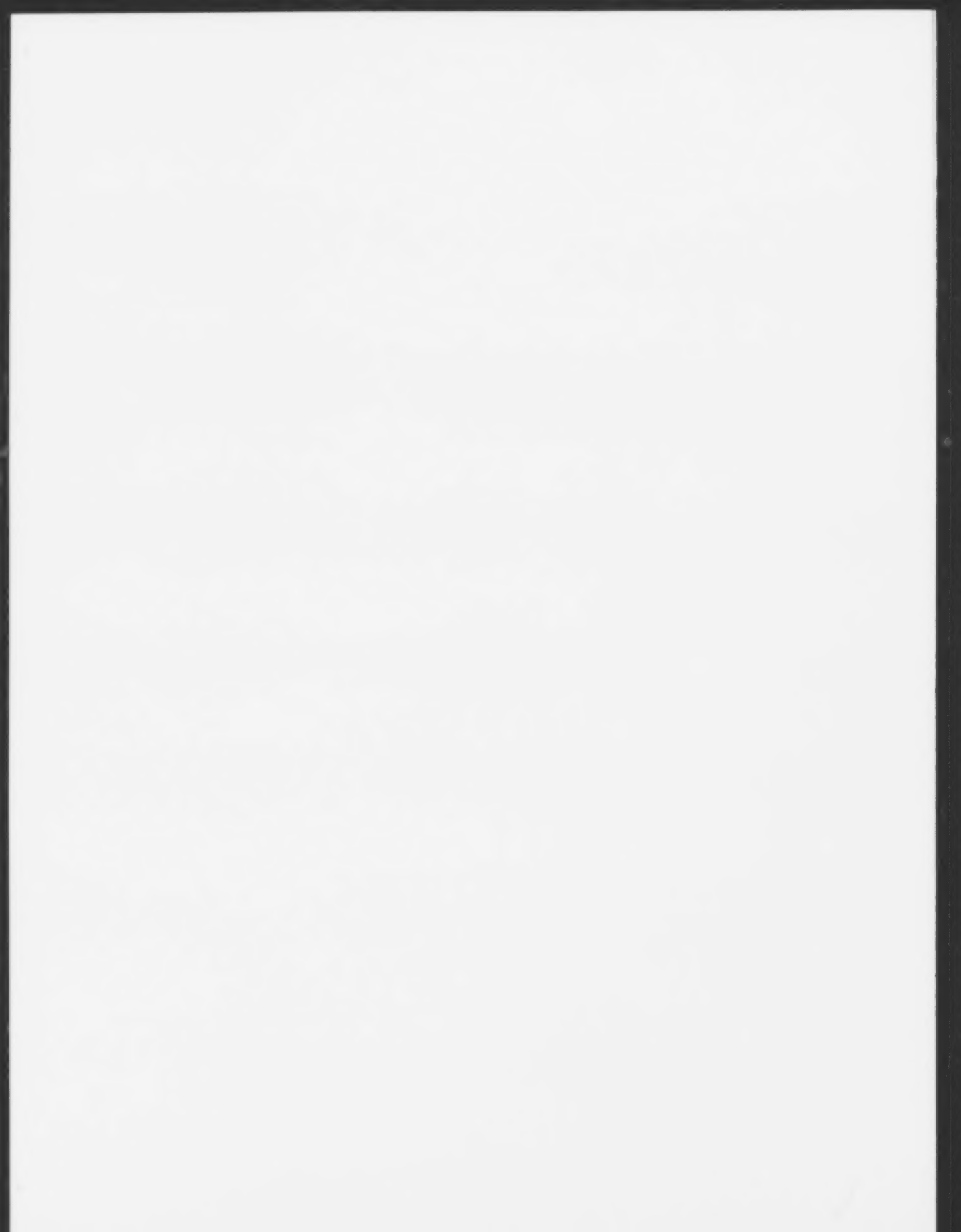
Thank you again for the opportunity to comment.

- I think the WCB should not interfere with any ongoing therapy of a worker, unless it is deemed unnecessary by an outside medical specialist.
- WCB should use a doctor specific to the worker's case and not one who is guessing what is best for the worker after "consultation" with anyone.
- WCB should not force a worker to 'heal' within a time limit that is unreasonable; or, cut off support therapy because they only 'help' you for a maximum of six months!
- I will forever after be in "pain management." WCB can cut me off help, decide if they will take the "employer" to court (or when) to recover all moneys used to "help" the injured workers; but not give the injured any further help in or with their permanent disability.
- WCB has no way of knowing how debilitating an injury is, because they either don't care or cannot be of assistance because of time limits they must follow.

STAKEHOLDER QUESTIONNAIRE AND SUMMARY OF RESPONSES

Additional Comments

- For all the progress I started to make, I would be 'cut off' therapy (without notice usually) and set back to the beginning again. This happened twice. Now I cannot even get the therapy I need.
- WCB does not commit itself to the "worker" but the bottom \$\$\$. They will recover their funds in court. I will be this way for the rest of my life! And with no guarantee of a satisfactory settlement. Because what they can't "see" does not constitute disability.
- We are attaching a completed copy of the Stakeholder Questionnaire circulated with your letter to stakeholders of July 16th, 2001. This Association represents the interests of the service and manufacturing sector of the upstream petroleum industry. We have over 250 member companies, whose approximately 34,000 employees account for almost 80% of the total number in the service sector of the oil and gas industry. Many of our members operate in the Northwest Territories and pay employer premiums to the Worker's Compensation Board. We want to take this opportunity to thank you for the invitation to complete the Stakeholder Questionnaire. If this Association can be of any further assistance in your review process, or if you require clarification of any of the answers we have provided on the Questionnaire, please contact us. We would appreciate being provided with a copy of the recommendations the Panel will be making to the Ministers.



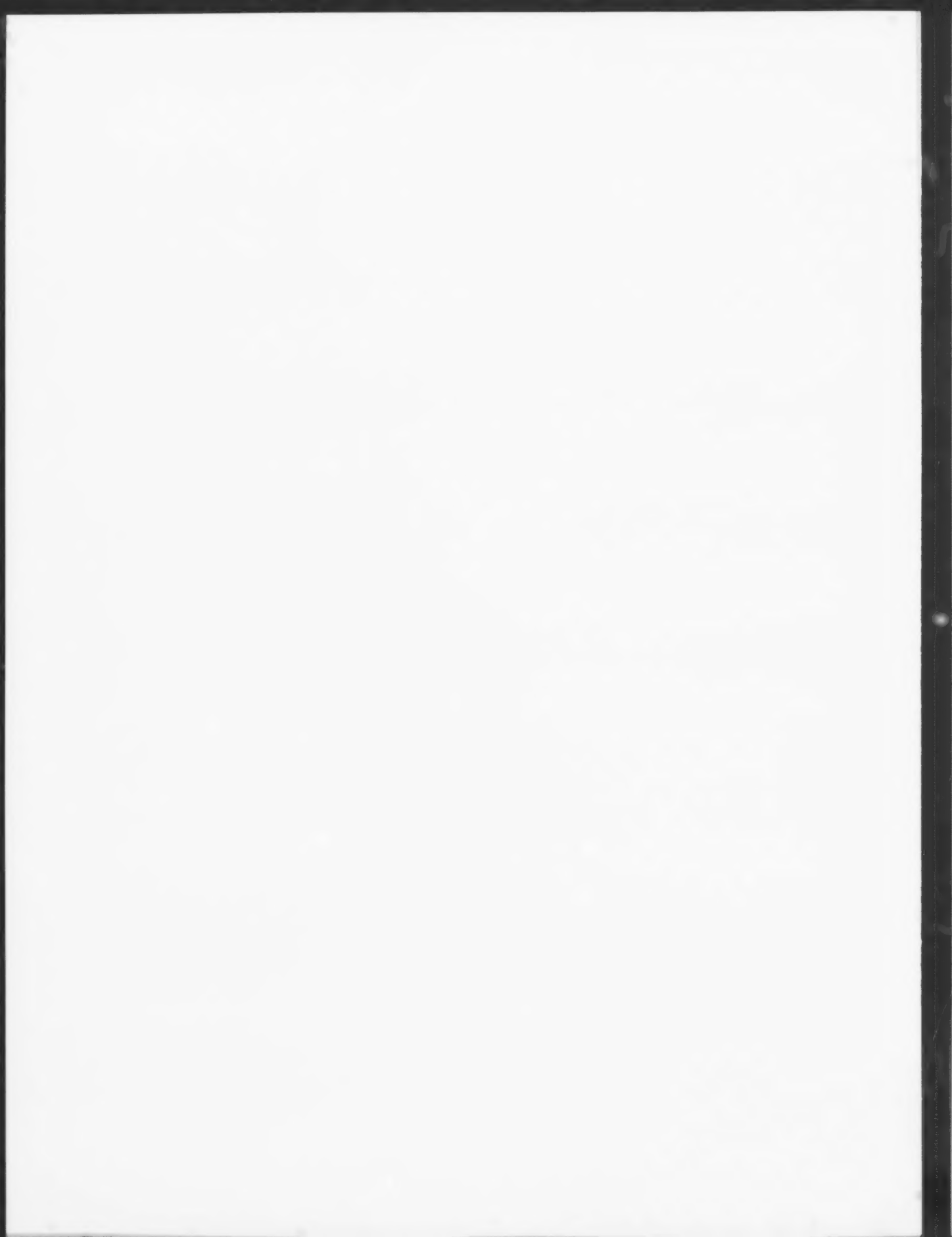
Appendix D

Summary of Issues from Public Hearings

This appendix contains a summary of the issues raised at public hearings held in regional centres and the capitals of the NWT and Nunavut.

The summary describes the issue that was raised, where and when it was raised, and, where the stakeholder identified themselves for the record, the name of the stakeholder. For easy reference, the comments made by stakeholders have been grouped in the same manner and order as the text of this report.

Electronic copies of unedited transcripts of the public hearings may be obtained by contacting the WCB Legislative Review Panel care of Margaret Halifax, Director of Executive Services, WCB, by email at margareth@wcb.nt.ca.



SUMMARY OF ISSUES FROM PUBLIC HEARINGS

3.0 WORKERS' COMPENSATION ACTS

3.1 The Fundamentals

3.1.1 The Purpose of the Acts:

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| State in the <i>Acts</i> : to serve public interest; legislated and funded insurance system. | ➤ S. Lee (OS/WS), Yellowknife, 28/05/01 |
| State purposes and mission; priorities should be (in order) safety, return to work, compensation; should not be overly prescriptive. Maintain no-fault principle, immunity, fair and equitable system. | ➤ M. de la Salle (OS), Yellowknife, 15/08/01 |
| | ➤ Canadian Association of Petroleum Producers (CAPP) (Miller) (OS/WS), Yellowknife, 16/08/01 |
| | ➤ Canadian Federation of Independent Business (WS), 21/06/01 |
| | ➤ C. Dent (WS), 31/08/01 |

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| Purposes stated should be based on Meredith principles. | ➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01 |
| | ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 |
| | ➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 |
| | ➤ CAPP (WS), 23/08/01 |

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| Profit should not be a priority. | ➤ C. Aindow (OS), Yellowknife, 17/08/01 |
| | ➤ Yellowknife Discussion, 17/08/01 |

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| Priorities: ensure proper funding of system; assist workers that need assistance. | ➤ G. Stewart (discussion), Yellowknife, 17/008/01 |
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| Compensate for lost wages; assist in returning workers to the workplace. | ➤ Canadian Association of Oilwell Drilling Contractors (WS), 23/08/01 |
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3.1.2 Definition of Worker:

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| Need to clarify status of sole proprietors who have elected not to have coverage. | ➤ GNWT Public Works and Services (WS), 22/08/01 |
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3.2 WCB Authority and Accountability

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| WCB should be accountable to the people it is intended to serve – the workers and employers of the NWT and Nunavut. | ➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01 |
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3.2.1 Exclusive Jurisdiction of the Workers' Compensation Board:

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| Maintain exclusive jurisdiction. | ➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01 |
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SUMMARY OF ISSUES FROM PUBLIC HEARINGS

	➤ Imperial Oil (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01
Allow appeals to courts for final decisions.	➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01 ➤ M. de la Salle (OS), Yellowknife, 15/08/01 ➤ J. Huffman (OS), Yellowknife, 16/08/01 ➤ C. Aindow (OS/WS), Yellowknife, 17/08/01
3.2.2 Independence Issues:	
Keep independence from government.	➤ Norman Wells Discussion, 26-27/03/01 ➤ B. Braden (OS/WS), Yellowknife, 28/05/01 ➤ C. Aindow (OS/WS), Yellowknife, 17/08/01
Minister's role is to ensure overall effectiveness.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01
3.2.6 Regular Reviews of the Workers' Compensation Acts:	
Agree.	➤ M. de la Salle (OS), Yellowknife, 15/08/01
Policy and program review every 2 years.	➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01
Every 5 years.	➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01 ➤ B. Enge (OS), Yellowknife, 16/08/01
Forensic audit of Workers' Compensation Board at minimum 5 year intervals.	➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01
3.2.7 Fiduciary Responsibility of the WCB Board of Directors:	
Board has this responsibility. Stewardship accountability to employers; Board of Directors are trustees of the Accident Fund.	➤ Inuvik Discussion, 27-28/03/01 ➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

3.2.9 Authority to Enter into

Agreements:

Should have this.

- Inuvik Discussion, 27-28/03/01
- Yellowknife Discussion, 28/05/01

3.2.10 Authority to Initiate

Prosecutions:

Agree

- Inuvik Discussion, 27-28/03/01

Need more fraud investigations; more investigations in general.

- Norman Wells Discussion, 26-27/03/01

Fraud should be watched for, makes it harder for legitimate claimants.

- K. Guin (OS), Yellowknife, 16/08/01

Disagree. Keep justice system separate.

- M. de la Salle (OS), Yellowknife, 16/08/01

3.2.11 Peace Officer Status for WCB

Official:

Disagree – question of policing the WCB itself.

- J. Huffman (OS), Yellowknife, 16/08/01
- M. de la Salle (OS), Yellowknife, 16/08/01

3.2.12 Authority to Own Real Property:

Agree.

- Iqaluit Discussion, 15/08/01

Disagree.

- M. de la Salle (OS), Yellowknife, 15/08/01, 16/08/01
- J. Huffman (OS), Yellowknife, 16/08/01

3.3 WCB Board of Directors

3.3.2 Authority to Appoint the WCB

Board of Directors:

Transparent process should require appointees to submit standard applications, be appointed from workers, employers and general public.

- J. Posynick (OS/WS), Yellowknife, 29/05/01

Ministers appoint Board in consultation with, and with a balance of, stakeholders.

- Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01
- WCB Coalition (OS/WS), Yellowknife, 29/05/01
- United Steelworkers of America

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

	(OS/WS), Yellowknife, 27/05/01
	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01
	➤ CAPP (WS), 23/08/01
	➤ Canadian Association of Oilwell Drilling Contractors (WS), 23/08/01
3.3.3 Representatives from Nunavut on the WCB Board of Directors:	
3 should be appointed from each territory.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01
3 Nunavut, 4 NWT	➤ Iqaluit Discussion, 15/08/01
3.3.4 Appointment of Chairperson:	
Chairperson should alternate between Nunavut and NWT.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01
Board members should select Chairperson from stakeholder nominations.	➤ United Steelworkers of America (OS/WS), Yellowknife, 27/05/01
3.3.7 Remuneration of the WCB Board of Directors:	
Process for fixing remuneration should be transparent.	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
3.4 Stakeholder Advisors	
3.4.1 Compensation Advisor:	
Advisors should counsel both workers and employers on WCB process.	➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01
	➤ Canadian Federation of Independent Business (WS), 21/06/01
Stakeholder advisors would work with employers and workers, including representation at Appeals Tribunal, but not provide legal services.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01
	➤ CAPP (WS), 23/08/01
3.4.2 Workers' Advisor:	
Needed in Nunavut.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

Independence compromised because WCB pays the Advisor.	➤ B. Enge (OS), Yellowknife, 16/08/01 ➤ Fort Smith Discussion, 23-24/05/01
Establish in <i>Act</i> ; independent of WCB.	➤ C. Aindow (OS), Yellowknife, 28/05/01
Include authority to refuse or discontinue assistance.	➤ Workers' Advisor Office (OS/WS), Yellowknife, 28/05/01
Expand role to broader advocacy.	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
Should include legal assistance.	➤ B. Braden (OS/WS), Yellowknife, 28/05/01 ➤ S. Lee (OS/WS), Yellowknife, 28/05/01
Establish in <i>Act</i> ; advisory committee to meet every six months; WCB and stakeholder selection committee to select Workers' Advisor Office (WAO); WAO term 2-5 years; increase resources for WAO.	➤ Northern Territories Federation of Labour (OS/WS), Yellowknife, 29/05/01
WAO should have unfettered access to all WCB materials concerning an injured worker who has sought assistance, including client files, automatic updates, investigations reports. WAO should report to Minister by way of an annual report.	➤ Iqaluit Discussion, 15/08/01 ➤ J. Huffman (OS), Yellowknife, 16/08/01 ➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01 ➤ Northern Territories Federation of Labour (OS/WS), Yellowknife, 29/05/01
Office could be funded from Accident Fund, with accounting through Minister. Funding should allow staffing, as justified to the Minister.	➤ Workers' Advisor Office (WS), 24/08/01
3.4.3 Employers' Advisor:	
Should be one. Particularly for small employers	➤ Inuvik Discussion, 27-28/03/01 ➤ B. Braden (OS/WS), Yellowknife, 28/05/01
Not necessary.	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01

3.5 Review and Appeals Process

Principle of adjudication, not negotiation or alternate dispute resolution.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01
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SUMMARY OF ISSUES FROM PUBLIC HEARINGS

	➤ CAPP (WS), 23/08/01
Acts should allow someone with authority to negotiate settlements, and for binding arbitration.	➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01
3.5.1 Review Committee:	
Ensure fairness, no adversarial process or competing rights; review decisions and proper application of policies.	➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01
Provide internal, independent review.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01
Mandatory review of every decision by an adjudicator.	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
Get rid of Review Committee; simplify the process.	➤ J. Huffman (OS), Yellowknife, 16/08/01 ➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01 ➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01 ➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01 ➤ C. Aindow (OS), Yellowknife, 28/05/01
Need dispute resolution process.	➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01
Replace Review Committee with an internal review by Director, Client Services	➤ Workers' Advisor Office (WS), 24/08/01
3.5.2 Conflicting Medical Opinion:	
Medical Resolution Committee or system needed for conflicting medical opinions.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01 ➤ B. Braden (OS/WS), Yellowknife, 28/05/01 ➤ S. Lee (OS/WS), Yellowknife, 28/05/01 ➤ E. Brown (OS/WS), Yellowknife, 28/05/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 ➤ Imperial Oil Ltd. (OS/WS), Yellowknife,

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

	16/08/01 ➤ CAPP (WS), 23/08/01 ➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01 ➤ Yellowknife Discussion, 28/05/01 ➤ Iqaluit Discussion, 15/08/01
Adjudicate medical conflicts.	➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01 ➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ Yellowknife Discussion, 16/08/01
Medical resolution committee, under Appeals Tribunal, to review all cases where there is a difference of opinion between the medical advisor and the treating physician.	➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01
Medical review panel should be independent.	➤ J. Huffman (OS), Yellowknife, 16/08/01
Contradictory medical judgements need to be resolved.	➤ D. Gelinas (WS), 20/08/01 ➤ L. Whalen (OS), Yellowknife, 16/08/01
Medical officer should only serve the WCB.	➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01
Medical decisions need to be consistent and subject to review.	➤ L. Rohac (OS), Yellowknife, 17/08/01
Medical Advisor has too much authority; worker should be able to use family doctors and specialists.	➤ M. de la Salle (OS), Yellowknife, 16/08/01 ➤ Yellowknife Discussion, 17/08/01
Physician credentials need review. Medical conflicts need resolution.	➤ C. Aindow (OS), Yellowknife, 29/05/01 and 17/08/01
Establish a medical review panel, with appointments managed by the Appeals Tribunal to ensure independence, including at least one specialist. Claimant would need permission to appeal a medical decision to the panel. Panel decisions would be binding on all levels of WCB decision-making as well as on the Appeals Tribunal.	➤ Workers' Advisor Office (WS), 24/08/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

Medical Advisor should discuss differences of opinion with other physicians. If necessary, a medical panel could be convened to make a final decision, not appealable. (Consult NWT Medical Association for process.)

➤ C. Dent (WS), 31/08/01

3.5.3 Independence of the Appeals Tribunal:

Maintain independence; Board should not appoint members.

➤ Rankin Inlet Discussion, 16-18/05/01
➤ J. Posynick (OS/WS), Yellowknife, 29/05/01

Need an impartial third party. Board should only provide administrative support.

➤ Braden-Burry Expediting Services Ltd.(OS/WS), Yellowknife, 17/08/01
➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01
➤ CAPP (WS), 23/08/01
➤ J. Huffman (OS), Yellowknife, 16/08/01

There is bias within the WCB and the Appeals Tribunal.

➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01
➤ Northern Territories Federation of Labour (OS/WS), Yellowknife, 29/05/01
➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01

Create independent, professional Appeals Tribunal, separate from WCB offices.

➤ Workers' Advisor Office (WS), 24/08/01

Appeals process should be completely separate from the WCB, administered by the Department of Justice.

➤ C. Dent (WS), 31/08/01

3.5.4 Appointments to the Appeals Tribunal:

Board should not appoint members.

➤ Rankin Inlet Discussion, 16-18/05/01

Two members from Council for Disabled Persons or other body; labour representatives chosen from Federation of Labour submission.

➤ Northern Territories Federation of Labour (OS/WS), Yellowknife, 29/05/01

Appointments should balance

➤ Imperial Oil Ltd. (OS/WS), Yellowknife,

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

stakeholders, follow their input.	16/08/01 ➤ CAPP (WS), 23/08/01
Appointment by Board means Appeals Tribunal is not impartial.	➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01
Minister should appoint based on merit first, then stakeholder nominations.	➤ Workers' Advisor Office (WS), 24/08/01
Appoint a full-time chair. Appoint more members to reduce delays.	➤ Northern Territories Federation of Labour (OS/WS), Yellowknife, 29/05/01 ➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01
3.5.5 Time Limits in the Appeal Processes:	
Implement decisions within 30 days.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01 ➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01 ➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01
Set time limit on filing appeals.	➤ Canadian Federation of Independent Business (WS), 21/06/01
Set time limit, but not under 60 days; Panel could extend it. Time hearings on urgency and other factors, not first come first served. Render decisions within 45 days.	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
Minimum response time should be set for any decision: 3 months to hearing, 2 weeks from hearing to written decision.	➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01
Process is too long.	➤ Northern Territories Federation of Labour (OS/WS), Yellowknife, 29/05/01
Decisions must be implemented. Delays may result from Appeals Tribunal and WCB having different interpretations. Implementation should not be delayed.	➤ J. Huffman (OS), Yellowknife, 16/08/01 ➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01
Speed up process.	➤ Rankin Inlet Discussion, 16-18/05/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

Improve timeliness of decisions and communication.	➤ Effie Brown (OS/WS), Yellowknife, 28/05/01
Delays cost claimants in assets and equity.	➤ Iqaluit Discussion, 15/08/01 ➤ Yellowknife Discussion 16/08/01
Appeals require time and money, limiting access of small businesses; set reasonable time limits. Ensure no delays in receiving decisions.	➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01
Do not set time limits on filing appeals.	➤ Workers' Advisor Office (OS/WS), Yellowknife, 28/05/01
3.5.6 Exclusive Jurisdiction of the Appeals Tribunal:	
Agree, unless there is an error in fact or law.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01
Do not file decisions in court.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01
Appeal to Supreme Court potentially creates a loop as Court can only recommend rehearing by Appeals Tribunal. Court should be allowed to make a final decision.	➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01
Decisions should be appealable to the Supreme Court of the NWT or the Court of Justice in Nunavut, based on established principles of Administrative Law.	➤ Workers' Advisor Office (WS), 24/08/01
3.5.7 Award of Costs:	
Make provision for this.	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
3.5.8 Outstanding Appeals:	
Must be dealt with; need way to deal with "unmanageable cases."	➤ B. Braden (OS/WS), Yellowknife, 28/05/01
A special committee should review long-standing claims, membership to include representatives from labour, injured workers, business and WCB.	➤ Northern Territories Federation of Labour (WS), 23/08/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

3.5.9 Use of Appeals Tribunals in Other Jurisdictions:

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| Arrange for appeals to be heard by the Alberta or Yukon boards, to avoid bias. | ➤ Northern Territories Federation of Labour (WS), 23/08/01 |
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3.6 Compensation

3.6.1 Compensable Injuries and Industrial Diseases:

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|---|--|
| Compensation should be provided for disease caught on the job; stress; chronic pain; heavy metal exposure; soft tissue injuries; depression; harassment. | <ul style="list-style-type: none"> ➤ Norman Wells Discussion, 26-27/03/01 ➤ Inuvik Discussion, 27-28/03/01 ➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01 ➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01 ➤ NWT Coalition for Harassment Free Workplaces (OS/WS), 28/05/01 ➤ K. King (OS/WS), Iqaluit, 15/05/01 ➤ Rankin Inlet Discussion, 16-18/05/01 |
| Need recognition, diagnosis and treatment of repetitive strain injuries, substance dependency. Test for repetitive strain injuries routinely.
Provide treatment of chronic pain, substance dependency resulting from injury aftermath. | <ul style="list-style-type: none"> ➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01 ➤ J. Huffman (OS), Yellowknife, 16/08/01 ➤ L. Whalen (OS), Yellowknife, 16/08/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 ➤ D. Gelinis (WS), 20/08/01 ➤ Yellowknife Discussion, 16/08/01 |
| Clarify definition of workplace, coverage in transit. | ➤ S. Lee (OS/WS), Yellowknife, 28/05/01 |
| No expansion of compensable injuries should occur, including stress, chronic pain and others. | ➤ Canadian Federation of Independent Business (WS), 21/06/01 |
| All occupational injuries should be compensable. Harassment is a human rights issue, not WCB; addictions are a lifestyle issue, not WCB. | ➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01 |
| Stress should only be covered for specific event or incident; substance abuse is not a WCB matter but is a social and personal responsibility. | <ul style="list-style-type: none"> ➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01 |

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

Injuries subsequent to initial injury should be covered; e.g., from wheelchair use.	➤ C. Aindow (OS), Yellowknife, 17/08/01
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3.6.2 System of Financial Compensation:

Compensation for permanent disability is inadequate; allowances should be changed, reviewed annually; pain considered. Subsequent, related injuries should be covered. Wage loss should be covered.	➤ Iqaluit Discussion, 15/08/01
	➤ Yellowknife Discussion, 16/08/01
	➤ C. Aindow (OS), Yellowknife, 17/08/01
	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
	➤ Yellowknife Discussion, 28/05/01

Earnings should be allowed while on benefits.	➤ M. de la Salle (OS), Yellowknife, 15/08/01
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Compensation for quality of life should be in policies and guidelines, not <i>Acts</i> . Both compensation and wage loss should be provided.	➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01
	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01
	➤ Yellowknife Discussion, 16/08/01
	➤ CAPP (WS), 23/08/01
	➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01

Legislation should clearly direct how to calculate compensation and wage loss, recognizing that medical impairment often does not reflect actual wage loss.	➤ Workers' Advisor Office (WS), 24/08/01
	➤ C. Aindow (OS), Yellowknife, 17/08/01
	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
	➤ Yellowknife Discussion, 28/05/01

Replacement job had less overtime. After layoff, the impairment prevented taking the jobs that were available and offered. Future wage losses should be considered, as well as the injury compensation.	➤ L. Whalen (OS), Yellowknife, 16/08/01
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Compensate for wage loss.	➤ Canadian Association of Oilwell Drilling Contractors (WS), 23/08/01
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3.6.3 Year's Maximum Insurable Remuneration (YMIR):

Tie YMIR to territory and community.	➤ Inuvik Discussion, 27-28/03/01
	➤ Iqaluit Discussion, 15/08/01

Tie YMIR to an objective standard,	➤ CAPP (Miller) (OS/WS), Yellowknife,
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SUMMARY OF ISSUES FROM PUBLIC HEARINGS

reviewed periodically.	16/08/01
Tie YMIR to a cost of living standard.	➤ B. Enge (OS), Yellowknife, 16/08/01 ➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01
Remove cap on YMIR.	➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01
Current YMIR is 50% too low.	➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01
Set by WCB Board of Directors on stated standard, following consultation; one level for both territories.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01
3.6.4 Special Purpose Financial Compensation:	
Fatality benefits should go to parents if no dependants; amounts for burial and related costs are too low.	➤ Summit Air (WS), 9/05/01
Payments to dependants are too low.	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
Clothing allowance should be increased and set in policy.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01
Quality of life compensation should be provided in policies.	➤ CAPP (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01
Allowances should be changed, reviewed annually	➤ Iqaluit Discussion, 15/08/01
Wheelchair replacement and other supplies and allowances should be increased. Claimants should be consulted about changes. Home care is needed. Transportation costs need to be covered appropriately.	➤ C. Aindow (OS), Yellowknife, 29/05/01, 17/08/01
Workers are unaware of their entitlements.	➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01
Enhance support for re-education costs.	➤ S. Lee (OS/WS), Yellowknife, 28/05/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

3.6.5 Indexing Compensation by Community:

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| Adjust cost of living by community. | ➤ Inuvik Discussion, 27-28/03/01 |
| Index compensation. | ➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01 |

3.6.6 Net Annual Remuneration:

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| Calculate on current wages, not year's earnings. | ➤ K. King (OS/WS), Iqaluit, 15/05/01
➤ M. de la Salle (OS), Yellowknife, 15/08/01
➤ B. Enge (OS), Yellowknife, 16/08/01 |
| Only actual employment earnings should be included, not Employment Insurance earnings. | ➤ Canadian Association of Oilwell Drilling Contractors (WS), 23/08/01 |

3.6.7 Interest Payments:

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| Delays cost claimants in assets and equity | ➤ Iqaluit Discussion, 15/08/01
➤ Yellowknife Discussion, 28/05/01 and 16/08/01 |
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3.6.8 Commutations:

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| Set criteria clearly in legislation. | ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 |
| All claimants should have option of commuting a pension. | ➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01
➤ Cambridge Bay Discussion, 29-30/03/01 |
| Medical Compensation should continue, including future, related difficulties, after commuting a pension. | ➤ E. Brown (OS/WS), Yellowknife, 28/05/01
➤ Yellowknife Discussion, 16/08/01 |

3.6.10 Medical Compensation:

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| Need advice and consultations. | ➤ M. de la Salle (OS), Yellowknife, 15/08/01 |
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| Alternate therapies should be supported. | ➤ C. Aindow (OS), Yellowknife, 17/08/01 |
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3.6.11 Vocational Rehabilitation:

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| Enhance benefits for costs of maintaining family in territories and attending school | ➤ S. Lee (OS/WS), Yellowknife, 28/05/01 |
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SUMMARY OF ISSUES FROM PUBLIC HEARINGS

elsewhere.	
Adjust support to current costs and needs. Need retraining.	➤ B. Enge (OS), Yellowknife, 16/08/01 ➤ M. de la Salle (OS), Yellowknife, 15/08/01
Rehabilitation should be primary focus; should be provided to every injured worker. Details should be in policy.	➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01 ➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ Yellowknife Discussion, 16/08/01 ➤ CAPP (WS), 23/08/01 ➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01
Restore the dignity of injured workers. Retraining does not guarantee job access; advice on jobs should be consistent and timely. Psychological counselling should be available.	➤ Yellowknife Discussion, 16/08/01 ➤ D. Desjarlais (WS & OS), 24/08/01
WCB, with the employer, should be required to provide retraining.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01
Timing for vocational rehabilitation should be appropriate. Deal with contradictory vocational rehabilitation recommendations, effect of chronic pain on work.	➤ C. Aindow (OS), Yellowknife, 17/08/01 ➤ D. Gelinas (WS), 20/08/01
3.6.12 Harvesters:	
Cover hunters and trappers.	➤ Norman Wells Discussion, 26-27/03/01
Increase financial compensation; cover during preparation and processing; reduce administration costs; add coverage for carvers and other traditional lifestyles.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01
3.7 Assessments	
3.7.1 Assessable Payroll:	
Should only be wages, not benefits.	➤ Hamlet of Cambridge Bay (OS/WS), 29-30/03/01
Employer and worker should share assessment payments.	➤ K. Diebold (OS), Inuvik, 27-28/03/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

3.7.2 Assessments for Extra-territorial

Workers:

No duplication of assessments by WCBs.	➤ Inuvik Discussion, 27-28/03/01
Make claims only in jurisdiction in which assessment is paid.	➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01
WCBs should rework interprovincial agreements for assessment; employer should not pay twice.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01
Coverage for short term employees in Canada needs to be resolved. Risks for Canadian workers overseas are often higher, such as dangerous transportation.	➤ Yellowknife Discussion, 16/08/01

3.7.3 Rewarding Safe Employers:

Safety rebates and incentives should apply.	➤ Norman Wells Discussion, 26-27/03/01 ➤ Inuvik Discussion, 27-28/03/01 ➤ Cambridge Bay Discussion, 29-30/03/01 ➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 ➤ Canadian Red Cross (WS), 21/08/01
Penalties should apply for poor safety performance.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01
Link assessments to accident rates.	➤ Yellowknife Discussion, 16/08/01 ➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01

3.7.4 Appeal of Assessments:

Appeal of classification, reclassification should be allowed.	➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01
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3.8 Industrial Classification

3.8.1 Process for Establishing Industrial Classification:

Employers to set classes.	➤ K. Diebold (OS), Inuvik, 27-28/03/01
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SUMMARY OF ISSUES FROM PUBLIC HEARINGS

Criteria should be transparent.	➤ Imperial Oil (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01 ➤ Braden-Burry Expediting Services, Ltd. (OS/WS), Yellowknife, 17/08/01
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3.8.2 Classifying an Employer in More than One Class or Subclass:

Mixed rates should apply, especially for administration staff.	➤ Inuvik Discussion, 27-28/03/01
Separate high risk occupations within an industry, so the correct employers share the costs, not all employers within that industry.	➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
Classification within an industry should be appropriate.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01

3.9 Accident Fund

3.9.1 Fully Funded Accident Fund:

Keep fully funded status.	➤ Norman Wells Discussion, 26-27/03/01
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3.9.2 Accident Fund Surplus:

WCB should not have surplus.	➤ S. Lee (OS/WS), Yellowknife, 28/05/01
Use Surplus to pay rebates.	➤ Norman Wells Discussion, 26-27/03/01

3.9.3 Authority to Make Investments:

Prohibit government from directing investments.	➤ Norman Wells Discussion, 26-27/03/01
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3.10 Access to Information

3.10.1 Access to WCB Documents:

Monthly disclosures by WCB to Workers' Advisor Office.	➤ Workers' Advisor Office (OS/WS), Yellowknife, 28/05/01
Medical records should be accessible.	➤ Iqaluit Discussion, 15/08/01 ➤ Yellowknife Discussion, 28/05/01 and 16/08/01
WCB should make complete disclosure to appellant of documents used in appeals process.	➤ Braden-Burry Expediting Services Ltd. (OS/WS), Yellowknife, 17/08/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

Public should have access to previous appeals decisions.	➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01 ➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 ➤ Yellowknife Discussion, 28/05/01
Public should have access to Board of Directors minutes.	➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01
3.10.2 Access to Review Committee and Appeals Tribunal Reports:	
Public should have access.	➤ Canadian Federation of Independent Business (WS), 21/06/01 ➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01 ➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01
3.11 Financial Penalties	
3.11.1 Authority to Set Financial Penalties:	
There should be legislated penalties for employers who jeopardize a worker's claim for compensation.	➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01
3.11.2 Application of Penalties:	
Apply to employers, doctors, health centres for failure to report.	➤ Cambridge Bay Discussion, 29-30/03/01
3.12 Employer Responsibilities	
3.12.1 Duty to Accommodate:	
More post-claim follow-up with employers	➤ Norman Wells Discussion, 26-27/03/01
Discretionary for smaller firms.	➤ Inuvik Discussion, 27-28/03/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 ➤ Yellowknife Discussion, 16/08/01 ➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

Limits needed; undue hardship on employer should be considered; role of seniority; consistency with labour legislation. Employers bringing workers back early, to unproductive work, to avoid lost time and penalties.	➤ K. King (OS/WS), Iqaluit, 15/05/01 ➤ Yellowknife Discussion, 16/08/01 ➤ Cambridge Bay Discussion, 29-30/03/01 ➤ Iqaluit Discussion, 15/08/01
Should include retraining, substance dependency.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01
Duty to accommodate should be set in policy.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ CAPP (WS), 23/08/01
Replacement job may have less overtime (lower total pay). After layoff, the impairment can keep claimant from taking the jobs that are available and offered.	➤ L. Whalen (OS), Yellowknife, 16/08/01 ➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01
Light duty should be appropriate.	➤ L. Rohac (OS), Yellowknife, 17/08/01
3.12.2 Liability of Corporate Directors:	
Director liability should not interfere with immunity from lawsuit.	➤ Canadian Federation of Independent Business (WS), 21/06/01
3.12.3 Initial Costs of Transporting an Injured Worker:	
Clarify whether nursing station meets requirement of nearest medical centre.	➤ Cambridge Bay Discussion, 29-30/03/01
Should be a maximum deductible on the cost.	➤ Hamlet of Cambridge Bay (OS/WS), Cambridge Bay, 30/05/02
3.12.4 Employer Records	
Section 67 powers are excessive and should be restricted to payroll and related documents.	➤ Avery, Cooper & Co. (WS), 20/07/01
3.13 Environmental Change	
3.13.1 Health Care Definitions:	
Legislation should not specify physicians only – nurse practitioners provide service.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

3.14 Framework for Administration

3.14.1 Basis for Decision-making:

Benefit of doubt to worker. (Presumption in favour)	➤ B. Braden (OS/WS), Yellowknife, 28/05/01 ➤ S. Lee (OS/WS), Yellowknife, 28/05/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 ➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01
Principle of natural justice should apply.	➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 ➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01
Basis for decision-making – merit or precedent	➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01 ➤ United Steelworkers of America (OS/WS), Yellowknife, 29/05/01 ➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 28/05/01 ➤ CAPP (WS), 23/08/01 ➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01

3.14.2 Client Bill of Rights:

Communicate client rights, obligations, processes clearly; be respectful, not dictatorial. System can be difficult to deal with for many reasons: lack of support systems, language, education; state of mind.	➤ B. Braden (OS/WS), Yellowknife, 28/05/01 ➤ K. King (OS/WS), Iqaluit, 15/05/01 ➤ Diversified Construction (OS), Yellowknife, 28/05/01 ➤ WCB Coalition (OS/WS), Yellowknife, 29/05/01
Support system is needed. More compassion, be consistent with requirements, deadlines, timeliness. Ensure clients know about resources available. Maintain confidentiality.	➤ K. Tompkins (OS/WS), Yellowknife, 28/05/01 ➤ S. Lee (OS/WS), Yellowknife, 28/05/01 ➤ E. Brown (OS/WS), Yellowknife, 28/05/01 ➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 ➤ L. Whalen (OS), Yellowknife, 16/08/01 ➤ B. Enge (OS), Yellowknife, 16/08/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

Adjudicators should have appropriate backgrounds and attitudes. Staff should understand and act on purposes of WCB. Administration should not be sloppy, payments late, etc.	➤ C. Aindow (OS), Yellowknife, 17/08/01 ➤ Yellowknife Discussion, 17/08/01 ➤ D. Desjarlais (OS/WS), Yellowknife, 24/08/01 ➤ M. de la Salle (OS), Yellowknife, 16/08/01 ➤ B. Enge (OS), Yellowknife, 16/08/01 ➤ G. Stewart (discussion), Yellowknife, 17/08/01 ➤ K. Guin (OS), Yellowknife, 16/08/01 ➤ Yellowknife Discussion, 16/08/01 ➤ D. Gelinis (WS), 20/08/01
WCB staff are unable/unwilling to fairly represent employers' interests.	➤ Canadian Association of Oilwell Drilling Contractors (WS), 23/08/01
3.14.3 Structure of the Acts:	
Put as much as possible in legislation to avoid interpretation by administrators.	➤ J. Posynick (OS/WS), Yellowknife, 29/05/01 ➤ C. Aindow (OS), Yellowknife, 28/05/01
Quality of life compensation should be in policies, guidelines. Keep greatest possible flexibility in Acts, to support individual choices.	➤ CAPP (Miller) (OS/WS), Yellowknife, 16/08/01 ➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 28/05/01 ➤ CAPP (WS), 23/08/01
3.14.4 Effect of the Nunavut Land Claims Agreement Act:	
(See Section 4.6.3, Effect of the Nunavut Land Claims Agreement Act on Safety Acts, below.)	

4.0 SAFETY ACTS

4.1 WCB Authority and Accountability	
4.1.1 WCB Responsibility to Administer the Safety Acts:	
Safety should be separate from WCB for more focused administration.	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01 ➤ Yellowknife Discussion, 16/08/01 ➤ CAPP (WS), 23/08/01
WCB should continue to administer Safety.	➤ St. John Ambulance Council for the Northwest and Nunavut Territories

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

	(OS/WS), Yellowknife, 17/08/01 ➤ K. Guin (OS), Yellowknife, 16/08/01
4.1.4 Process for Changing Codes, Standards, and other Safety measures:	
Before changing or enforcing: consult; give reasonable notice; consider timing for industry.	➤ Diversified Construction (OS), Yellowknife, 28/05/01 ➤ B. Braden (OS/WS), Yellowknife, 28/05/01 ➤ Iqaluit Discussion, 14/08/01
Streamline process for amending regulations and schedules; WCB should have delegated authority to amend regulations relating to first aid training and supplies.	➤ St. John Ambulance Council for the Northwest and Nunavut Territories (OS/WS), Yellowknife, 17/08/01
4.1.6 Regular Reviews of the Safety Acts:	
Update regulations regularly.	➤ St. John Ambulance Council for the Northwest and Nunavut Territories (OS/WS), Yellowknife, 17/08/01
4.1.7 Authority to Enter into Agreements:	
For expertise in specialized fields.	➤ Inuvik Discussion, 27-28/03/01
Should be able to contract not-for-profit organizations to provide first aid and safety programs. (See also Section 3.2.9, Authority to Enter into Agreements, above)	➤ St. John Ambulance Council for the Northwest and Nunavut Territories (OS/WS), Yellowknife, 17/08/01
4.1.8 Authority to Initiate Prosecutions: (See also Section 3.2.10, Authority to Initiate Prosecutions, above.)	
4.1.9 Peace Officer Status for WCB Official: (See also Section 3.2.11, Peace Officer Status for WCB Official, above.)	
4.2 Safe Workplaces	
Prevention is better (than compensation).	➤ K. Guin (OS), Yellowknife, 16/08/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

4.2.1 Environmental Tobacco Smoke:

Prohibit smoking; designate ventilated room; protect workers from secondhand smoke.

- Canadian Cancer Society (OS/WS), Yellowknife, 26/05/01
- Tobacco Action Yellowknife (OS/WS), 26/05/01
- Health and Social Services, GNWT (OS/WS), Yellowknife, 29/05/01

4.2.2 Harassment Free Workplaces:

Workplace harassment is a safety issue and should be regulated.

- NWT Coalition for Harassment Free Workplaces (OS/WS), Yellowknife, 26/05/01

Workplace harassment is a human rights issue, not a safety issue.

- Imperial Oil Ltd. (OS/WS), Yellowknife, 16/06/01
- Yellowknife Discussion, 16/06/01
- CAPP (WS), 23/06/01
- CAPP (Miller) (OS/WS), Yellowknife, 16/06/01

4.2.3 First Aid Training:

Should be required for all workers.

- Cambridge Bay Discussion, 29-30/03/01

Regulate Automated External Defibrillators. Change name of required training to a generic name, not specific to any presenting organization.

- Canadian Red Cross (WS), 21/06/01

Need more safety training; enforce that the training is done.

- K. Guin (OS), Yellowknife, 16/06/01

Link requirements to size and type of employer, in regulations; update to add CPR; minimum requirements for employers in remote locations; link first aid kit requirements to type, size and operational environment.

- St. John Ambulance Council for the Northwest and Nunavut Territories (OS/WS), Yellowknife, 17/06/01
- Iglood Discussion, 14/06/01

4.2.4 Commercial Diving:

Safety inspectors need specialized knowledge.

- Iglood Discussion, 14/06/01

4.2.5 Safety Inspections:

Safety representatives should be available in community.

- Cambridge Bay Discussion, 29-30/03/01

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

Should be more frequent.	➤ L. Rohac (OS), Yellowknife, 17/08/01
4.2.6 Best Safety Practices:	
Need more safety and young worker training; communicate best practices.	➤ Cambridge Bay Discussion, 29-30/03/01
Young worker and higher risk industry need more safety programs.	➤ Yellowknife Discussion, 16/08/01
Focus should be on promoting a safety culture, providing safety education through dissemination of information to workplaces.	➤ Canadian Federation of Independent Business (WS), 21/06/01
Employers have obligation to provide training to prevent workplace harassment.	➤ NWT Coalition for Harassment Free Workplaces (OS/WS), Yellowknife, 28/05/01
4.3 Advice From Stakeholders	
4.3.1 Advisory Council:	
Need council; e.g. for safety kit standards, consultation.	➤ St. John Ambulance Council for the Northwest and Nunavut Territories (OS/WS), Yellowknife, 17/08/01
Council of employees and employers would report to the Board twice a year.	➤ Northern Territories Federation of Labour (OS/WS), Yellowknife, 29/05/01
4.4 Employer Responsibilities	
4.4.1 Joint Work Site Health and Safety Committees:	
Should be required if 20 or more employees; regular meetings should be required.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour (OS/WS), Iqaluit, 15/05/01 ➤ Cambridge Bay Discussion, 29-30/03/01 ➤ Northern Territories Federation of Labour (OS/WS), Yellowknife, 29/05/01
Should not be required	➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 28/05/01 ➤ Canadian Federation of Independent Business (WS), 21/06/01
4.4.2 Employee Assistance Programs:	
Need these.	➤ Nunavut Employees Union and the Northern Territories Federation of Labour

SUMMARY OF ISSUES FROM PUBLIC HEARINGS

(OS/WS), Iqaluit, 15/05/01

- Should be separate from safety legislation. ➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 16/08/01
➤ CAPP (WS), 23/08/01

4.5 Financial Penalties

4.5.2 Application of Fines to Workers:

- Penalize employees for not working safely when employer has provided a safe workplace. ➤ Canadian Association of Oilwell Drilling Contractors (WS), 23/08/01

4.6 Framework for Administration

4.6.1 Safety Materials:

- WCB to assist with safety manuals and plans. ➤ Inuvik Discussion, 27-28/03/01
➤ Cambridge Bay Discussion, 29-30/03/01
➤ Hay River Discussion, 24-25/05/01
➤ Imperial Oil Ltd. (OS/WS), Yellowknife, 28/05/01

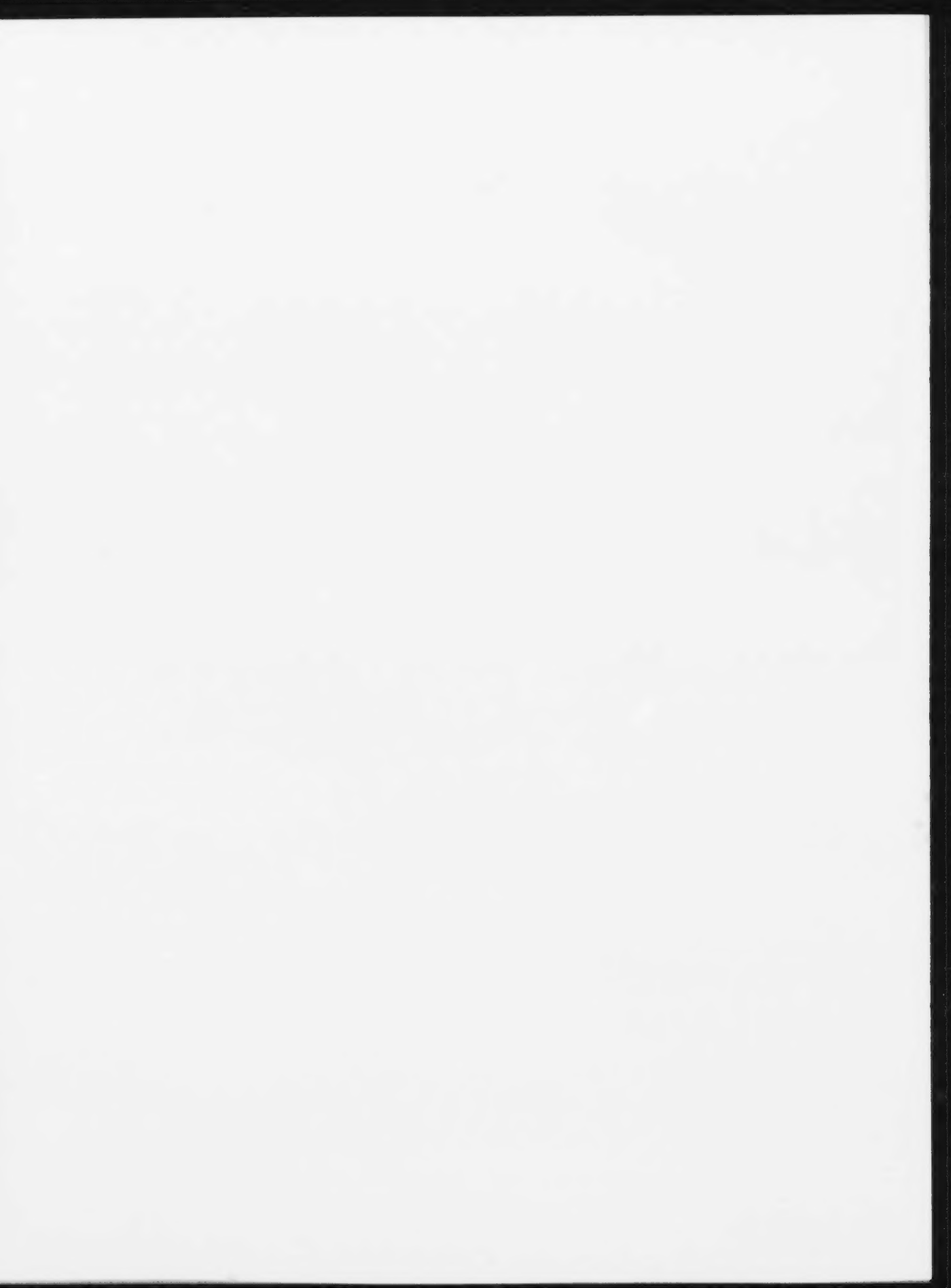
4.6.2 Consistency with the *Mine Health and Safety Acts*:

- Acts* should match. ➤ Rankin Inlet Discussion, 16-18/05/01

4.6.3 Effect of the *Nunavut Land Claims Agreement Act*:

- Legislation must conform with the *Nunavut Land Claims Agreement Act*, specifically with regard to licensing requirement for divers. Inuit should be reasonably allowed to engage in economic activity without excessive interference. ➤ Nunavut Tunngavik Inc. (WS), 28/08/01

Electronic copies of unedited transcripts of the public hearings may be obtained by contacting the WCB Legislative Review Panel care of Margaret Halifax, Director of Executive Services, WCB, by email at margareth@wcb.nt.ca



Appendix E

Summary of Formal Presentations and Written Submissions

This appendix contains a listing of those stakeholders who made a formal, written presentation at public hearings and those stakeholders who wrote to the Panel.

Electronic copies of formal presentations or written submissions may be obtained by contacting the WCB Legislative Review Panel care of Margaret Halifax, Director of Executive Services, WCB, by email at margareth@wcb.nt.ca.



SUMMARY OF FORMAL PRESENTATIONS AND WRITTEN SUBMISSIONS

Written Submissions

SUBMITTERS

Avery, Cooper & Co., Gerald F. Avery, F.C.G.A.

Canadian Association of Oilwell Drilling Contractors, Murray P. Sunstrum

Canadian Association of Petroleum Producers (CAPP), Pierre R. Alvarez

Canadian Federation of Independent Business, Corinne Pohlmann

Canadian Red Cross, Tannis Nostedt

GNWT Public Works and Services, D. Bruce Rattray

Injured Worker, Daniel Gelinas

Injured Worker, Dennis Desjarlais

MLA, NWT, Charles Dent

Northern Territories Federation of Labour, Bob Haywood

Nunavut Tunngavik Inc., James Eetoolook

Petroleum Services Association of Canada, Patrick J. Delaney

Summit Air, Barbara Tait

Workers' Advisor Office, Colin Baile

SUMMARY OF FORMAL PRESENTATIONS AND WRITTEN SUBMISSIONS

Submissions at Public Hearings

LOCATION	DATE	PRESENTATIONS
Norman Wells, NT	March 27, 2001	No Formal Presentations
Inuvik, NT	March 28, 2001	No Formal Presentations
Cambridge Bay, NU	March 30, 2001	• <i>Hamlet of Cambridge Bay</i> , Elwood Johnson
Iqaluit, NU	May 15, 2001	• <i>Public Service Alliance of Canada</i> , Kevin King • <i>Nunavut Employees Union and the Northern Territories Federation of Labour</i> , Mary-Lou Sutton-Fennell
Rankin Inlet, NU	May 17, 2001	No Formal Presentations
Fort Smith, NT	May 23/24, 2001	No Formal Presentations
Hay River, NT	May 24/25, 2001	No Formal Presentations
Fort Simpson, NT	May 26, 2001	No Informal or Formal Presentations
Yellowknife, NT	May 28/29, 2001	• <i>Workers' Advisor</i> , Colin Baile • <i>Canadian Cancer Society</i> , Arlene Yaceyko • <i>MLA, NWT</i> , Bill Braden • <i>Diversified Construction</i> , Cameron McGurk • <i>MLA, NWT</i> , Sandy Lee • <i>Injured Worker</i> , Effie Brown • <i>Injured Worker</i> , Wayne Campbell • <i>Tobacco Action Yellowknife</i> , Miriam Wideman • <i>Injured Worker</i> , Greg Bernard • <i>NWT Coalition for Harassment Free Workplaces</i> , Marsha Argue and Kate Tompkins • <i>Private Advocate</i> , Kate Tompkins • <i>Health and Social Services, GNWT</i> , Andre Corriveau • <i>Northern Territories Federation of Labour</i> , Bob Haywood • <i>WCB Coalition</i> , Cameron Aindow and Deb McLaughlin • <i>Imperial Oil Ltd.</i> , Mavis Kochar

SUMMARY OF FORMAL PRESENTATIONS AND WRITTEN SUBMISSIONS

Presentations at Public Hearings

LOCATION	DATE	PRESENTERS
Yellowknife, NT	May 28/29, 2001	• <i>Injured Worker</i>, Cameron Aindow • <i>Injured Worker</i>, Fraser Scoble • <i>Injured Worker</i>, John Huffman • <i>Injured Worker</i>, Michel de la Salle • <i>Injured Worker</i>, Denis Ouellette • <i>Injured Worker</i>, Gerry Lennie • <i>United Steelworkers of America</i>, Fernand Denault • <i>Lawyer</i>, Jim Posynick
Iqaluit, NU	August 14/15, 2001	No Formal Presentations
Yellowknife, NT	August 16/17, 2001	• <i>Canadian Association of Petroleum Producers (CAPP)</i>, Peter Miller • <i>Imperial Oil Ltd.</i>, Mavis Kochar • <i>Injured Worker</i>, Kerry Guin • <i>Injured Worker</i>, John Huffman • <i>Injured Worker</i>, Michel de la Salle • <i>Injured Worker</i>, Lewis Whalen • <i>Braden-Burry Expediting Services Ltd.</i>, Gordon Stewart • <i>Injured Worker</i>, Cameron Aindow • <i>Injured Worker</i>, Les Rohac • <i>St. John Ambulance Council for the Northwest and Nunavut Territories</i>, David Connelly

Electronic copies of Submissions that were presented to the Panel may be obtained by contacting the WCB Legislative Review Panel care of Margaret Halifax, Director of Executive Services, WCB, by email at margareth@wcb.nt.ca



